

W2006-01081-CEA-A3-CO  
IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THE THIRTIETH JUDICIAL DISTRICT

STATE OF TENNESSEE

ORIGINAL

vs.

Case No. 05-03038

VERN BRASWELL,

Defendant.

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WILLIAM R. LEY, CLERK  
BY Clear D.C.

TRANSCRIPT OF EVIDENCE

Volumes 6 of 11 Volumes

DECEMBER 5, 2005

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

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Reported by:  
Katherine Knowles  
Court Reporter

Vol. 6

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1                   IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

2                                   DIVISION 5

3       STATE OF TENNESSEE                   )

4                                   )

5       vs.                                   )

Case No. 05-03038

6       VERN BRASWELL,                   )

7                                   Defendant.                   )

8  
9                   This cause came to be heard and was heard on the  
10       5th day of December, 2005, et seq., before the Honorable  
11       Joseph B. Dailey, Judge, holding the Criminal Court for Shelby  
12       County, at Memphis, Tennessee, and a jury of twelve and two  
13       alternates.

14                   The jury was selected, impaneled, and duly  
15       accepted by both sides and sworn. Officers were sworn to take  
16       charge of the jury; a sequestered jury being requested. On  
17       December 6th, 2005, the indictments was read by Ms. Betsy  
18       Carnesale, Assistant District Attorney General for the State  
19       of Tennessee; plea of not guilty was entered by Mr. J. Bailey,  
20       Attorney for the Defendant.

21                   The witnesses were called, placed under the Rule  
22       and excluded from the courtroom. The following proceedings  
23       were had to wit:  
24  
25

1 THE COURT: Bring out Mr. Braswell, please. The  
2 motions that need to be addressed before we bring the jurors  
3 in are what?

4 MR. J. BAILEY: Two things, Judge. On -- I'm  
5 sorry, Your Honor. On last week I received a -- I'm sorry,  
6 week before last, last week I received a notice of the State's  
7 intent to present certain evidence of other crimes, wrongs and  
8 acts, overt acts, what we'd normally call prior bad acts.  
9 More specifically for the record, the State intends to show  
10 that in 1996, April of '96, that the defendant Mr. Braswell  
11 was involved in a domestic altercation where he was charged  
12 with domestic violence and that Ms. Braswell, the decedent,  
13 was hit, scratched, and choked and that photos were taken.  
14 That's one item.

15 Second item that we were noticed on is that in June of  
16 2004, that a Ms. Kristie Woods, who is allegedly Mr.  
17 Braswell's girlfriend of some sort, that at some party that  
18 Ms. Woods -- that the defendant became angry with Ms. Woods,  
19 grabbed her by the neck, and likewise, a similar incident,  
20 which the State alleged occurred in September of 2004 a couple  
21 of months later. It is our position and I filed this motion  
22 this morning in limine, it is our position that under Rule  
23 404(b) that these types of acts must be excluded if the  
24 purpose of which -- the purpose of their admission and their  
25 being offered into evidence is for the purpose of proving

1 character in conformity with those acts.

2 Now as far as I know from my own investigation, our  
3 investigation in this matter and what I believe to be what the  
4 State's proof will be, that's the sole purpose for admitting  
5 it into -- or offering it for evidence, that they want to show  
6 that Mr. Braswell, the way he's accused -- this alleged  
7 homicide is -- the accusation will be that the decedent died  
8 from a manual strangulation.

9 And, you know, offering proof of his choking some other  
10 individual a year ago or a little more than year ago and also  
11 slapping and choking the decedent Ms. Sheila Braswell almost  
12 ten years ago, nine years ago, the only purpose for that would  
13 be to submit into evidence, tender into evidence that when Mr.  
14 Braswell gets angry, he chokes. And that's what 404(b)  
15 specifically excludes.

16 The second part of our argument is that even if the  
17 Court were to rule that it's relevant and that it's not  
18 excluded under 404(b), the second part of 404(b) is really a  
19 restatement of 403, which simply says that if its prejudicial  
20 value outweighs its probative value, Your Honor is aware of  
21 that, that it has to be excluded as a matter of law. And we  
22 would conclude that all this could do would go to inflame this  
23 jury, to give the jury the impression that because he choked  
24 Kristie Woods or she alleges that he choked her -- there is no  
25 police report or anything of that nature that we know of and I

1 checked -- that because she alleges that he choked her or that  
2 he was rough and violent with her, that that means he was  
3 rough and violent with the decedent.

4 And it is our position that that's exactly what the --  
5 when you read the comments and the annotations to the rule,  
6 that's exactly what the crafters of the rule sought to  
7 exclude. Now I submitted to the Court three cases. I cite  
8 four but I submitted copies of three. More particularly,  
9 State versus Eakes, and I won't go through them but just for  
10 the record State versus Eakes, which is cited as 2003 Westlaw  
11 21523244 Tennessee Criminal Court of Appeals decision;  
12 likewise State versus Gilley, G-I-L-L-E-Y, that's cited at  
13 2004 Westlaw 367705. That's likewise a Tennessee Criminal  
14 Court of Appeals decision; State versus Stanton,  
15 S-T-A-N-T-O-N, which is cited at WL 876873. That's a  
16 Tennessee Criminal Court of Appeals decision; and finally,  
17 State versus Curry, C-U-R-R-Y, which is cited at 2001 Westlaw  
18 872789, again a Tennessee Criminal Court of Appeals decision.

19 In each case they simply set forth the test. Your  
20 Honor has seen that test many times. But in applying the test  
21 to the facts of this case, one can only conclude that the only  
22 purpose in submitting or offering such proof of prior bad  
23 acts, acts of alleged violence on the part of Mr. Braswell  
24 would be to show that his alleged behavior in this case was in  
25 conformity with the alleged behavior that occurred in those



1 incidents. And again, we believe that that is exactly what  
2 the Rule 62 exclude. And after that I have one other motion.

3 THE COURT: Unrelated to this?

4 MR. J. BAILEY: Unrelated to this.

5 MS. WEIRICH: Judge, just briefly. My motion  
6 speaks for itself. The State is offering to intend --  
7 intending to offer this proof, rather, to prove intent,  
8 identity, motive, lack of accident or mistake. I don't know  
9 what defense is going to throw up as their defense. In brief  
10 conversations this morning after being advised that they had  
11 an expert, I've learned that they've got an expert in deviant  
12 behavior. So perhaps they're going to throw forth some  
13 defense that shows that this was some sex act that went  
14 horribly wrong, which in the State's opinion makes this proof  
15 all the more relevant to show lack of accident or mistake.  
16 We're not offering to prove this to show that because he did  
17 it on these other days he must have done it this night. It  
18 goes to show the lack of mistake, lack of accident, identity,  
19 intent, all the things that we have to prove as part of the  
20 premeditation of murder in the first degree.

21 And the cases cited by us in the motion, they talk  
22 about the remoteness of the prior incident and that that is  
23 something that affects only the weight, not the admissibility.  
24 And what the Court looks to is a rational connection between  
25 the events, not a temporal one. That language is from Hahn, a

1 Tennessee Criminal Appeals opinion from 1985. But that's the  
2 basis of our motion, Judge, not to show conformity therewith.  
3 We would never be able to get into this proof if that was the  
4 basis.

5 THE COURT: Right. It's actually a little  
6 premature to try to rule on this question. It seems like I  
7 remember at the bond hearing that we had shortly after Mr.  
8 Braswell was indicted, there was some suggestion by Mr. Bailey  
9 that the defense was going to be that the defendant went to  
10 bed and the victim went in to take a bath and the next thing  
11 he knew, he woke up and found her dead in the bathtub. And  
12 now maybe there's something different in the defense.

13 MR. J. BAILEY: That was in his suppression  
14 hearing, Judge. That was what came out in his statement at  
15 the suppression hearing.

16 THE COURT: Or at the bond hearing.

17 MS. WEIRICH: That will be the proof, Judge, that  
18 911 received a call from the defendant indicating that he had  
19 been up with his wife around 1:30 in the morning. They were  
20 having sexual intercourse. He went to bed. She went to take  
21 a bath. He woke up at ten 'til four and found her dead in the  
22 bathtub. That is the State's case.

23 MR. J. BAILEY: That's the State's case. And the  
24 State is absolutely correct that we do -- it is our intention  
25 to put forth a defense that this was an accidental homicide

1 that it occurred during what is commonly called "rough sex" or  
2 "rough play." And we do have an expert to testify to that and  
3 to talk about that and assist the jury in understanding it.

4 THE COURT: Okay. Well, let me read through these  
5 cases and just sort of consider the arguments that have been  
6 made at least until after lunch. We certainly won't get into  
7 the part of voir dire until after lunch.

8 MR. J. BAILEY: Very well.

9 THE COURT: So I'll rule after lunch.

10 MR. J. BAILEY: Very well. And the other issue,  
11 Your Honor, it's my understanding -- I think Your Honor and I  
12 have already, along with Ms. Weirich, we had -- I came by the  
13 Court maybe a week or so ago and we talked about whether or  
14 not this case would be sequestered. And I think Your Honor  
15 indicated that it might be best if we do. For the record, we  
16 -- the defendant does not want the jury to be sequestered.

17 MS. WEIRICH: The State does for the record.

18 MR. J. BAILEY: We believe that particularly on a  
19 case that might last over a week or at least a week, it  
20 appears, that that limits us to jurors who are able to be  
21 locked up for that -- and I say "locked up," sequestered for  
22 that period of time. That limits us to a certain  
23 socioeconomic class of jurors, not necessarily a -- it's not a  
24 Batson challenge. We're not saying a certain race but  
25 certainly a certain socioeconomic class of jurors, jurors who

1 don't have to make -- who can make arrangements for childcare  
2 and on their jobs and so forth.

3 And we believe that the constitutional right to a jury  
4 of one's peers outweighs -- that's a fundamental right in the  
5 Bill of Rights in the Constitution, and it outweighs the  
6 Tennessee statutory scheme that allows for either side to ask  
7 for a sequestered jury. And just for the record, I submit  
8 that argument to the Court.

9 THE COURT: Well, I don't find Merritt with your  
10 argument. With all do respect, I think that my experience has  
11 shown over the past 24 years that people of all socioeconomic  
12 categories find ways to serve on juries and find ways to get  
13 off of juries and it's all about who's willing to serve on the  
14 jury; all races, all socioeconomic categories. Some folks  
15 have childcare problems that can't be avoided. But my  
16 experience has been in most instances, jurors all across the  
17 board have shown a willingness to serve on a sequestered jury.  
18 And I haven't really had any problem in getting a jury just  
19 because it was going to be sequestered. So I'll note your  
20 exception.

21 MR. J. BAILEY: Very well.

22 THE COURT: I don't know of any studies or  
23 research that's been done to substantiate your assertion. I  
24 do think that in this case, it being a first degree murder  
25 case, that I think will receive some publicity and attention

1 during the course of the week, it's necessary to -- in order  
2 to ensure the progress of the trial and the integrity of the  
3 case to have the jurors sequestered. I don't think that it's  
4 a security question in this case as it is in some case where  
5 we have, you know, gang ties or something of that sort, but I  
6 think it's a publicity issue and a distraction issue and a  
7 matter that is necessary in order to ensure the speedy  
8 resolution of the case and appropriate resolution of it.

9 MR. J. BAILEY: One last thing and we may be able  
10 to agree to this. I've received a motion in limine from the  
11 State. Let me just ask. It might be something we can agree  
12 to.

13 MS. WEIRICH: Judge, I filed this morning a motion  
14 in limine regarding -- should be a copy in the jacket --  
15 regarding one of the medical examiners who may testify in this  
16 case, Dr. Joye Carter. She's now working in Texas. And these  
17 were some issues that came up at the preliminary hearing. And  
18 just the different grounds that I've set forth in the motion  
19 in limine. One was this is a question that was asked by, I  
20 believe, Mr. Ballin at the preliminary hearing. He asked her  
21 if she was fired as the medical examiner in Harris County,  
22 Texas. She denied that and I don't know of any proof of that.  
23 These are things that I'm asking defense counsel not mention  
24 in jury selection or in cross-examination of Dr. Carter, that  
25 she asked individuals to fabricate individuals on autopsies.

1 This was a direct question again by defense counsel. Dr.  
2 Carter denied such in the preliminary hearing. And I believe  
3 Mr. Bailey was present at the preliminary hearing.

4 MR. J. BAILEY: I was.

5 MS. WEIRICH: That she was fined \$1000 as part of  
6 a settlement reached with the Texas State Board of Medical  
7 Examiners for allowing unlicensed pathologists to perform  
8 autopsies. Again, that evidence would be irrelevant. In the  
9 State's position, it's nothing that goes to her truthfulness  
10 or lack thereof; and that the Harris County Commission settled  
11 two whistle-blower suits that were brought because of action  
12 by Dr. Carter. And she again has a different take on that.  
13 She merely says that a settlement was reached and no wrong was  
14 done. The truth I'm sure lies somewhere in the middle. But  
15 again, any evidence of that or any questioning of that would  
16 be purely irrelevant and just prejudicial.

17 MR. J. BAILEY: Your Honor, in response, I think  
18 it is premature for us to state -- I'll just state this to the  
19 Court. At the present time we don't intend to utilize any of  
20 that information. I did participate in a preliminary hearing.  
21 However, Mr. Ballin was lead counsel at that time and  
22 Mr. Ballin sought to bring that evidence out during the  
23 question of whether or not this witness was going to be  
24 tendered as an expert. He was voir diring the witness with  
25 regards to prior incidents of bad acts during that portion of

1 her being qualified as an expert.

2 Now, we reserve the right, and I'd state to the Court  
3 that we're not intending to use it right now, but we reserve  
4 the right to impeach this witness if it comes to it. And so  
5 I'd ask the Court to reserve judgment on that 'til such time  
6 as it becomes an issue. But in all candor, we don't intend to  
7 utilize it. That's not part of my case.

8 THE COURT: Okay. If there comes a time that you  
9 feel that you do want to delve into any of this, by all means  
10 approach the bench. We'll have a jury-out hearing and we'll  
11 discuss it at that time.

12 MR. J. BAILEY: We'll agree to do that.

13 THE COURT: Okay. Obviously the Rule will be in  
14 effect. And I'm going to -- I assume these are all family  
15 members but not witnesses?

16 MR. J. BAILEY: Well one is a witness.

17 THE COURT: Whoever the witness is cannot come  
18 back in at all until he or she has testified. The other  
19 family members are welcome to come back in once we've selected  
20 the jury. But during jury selection, it's such a small  
21 courtroom and we have so many jurors in here that there is  
22 just not room for you. So if you want to stay on this floor  
23 during the afternoon while we're selecting the jury, you are  
24 certainly welcome to do so, but I'm going to ask that you stay  
25 down on that end of the hallway.

1           Mr. Bailey, you can escort them down there to that  
2 lobby area down on the other side of Division 6 where the --  
3 you know you go through the doors. There's some chairs there.  
4 They can sit down there. But I want to remind all of you that  
5 when we break for lunch in a few minutes, there are going to  
6 be 60 or so jurors milling around, taking elevators, probably  
7 downstairs in the snack bar. You are not to discuss the case  
8 in any way. Don't talk about it among yourselves because you  
9 never know when a juror may be standing next to you and  
10 overhear something you may say. And so you don't want to  
11 inadvertently say something in the presence of the jury. Now  
12 that's the category of inadvertently saying something.

13           Obviously, you all understand that you are not to  
14 intentionally say anything to any juror. You are not to  
15 approach any juror and intentionally try to influence them or  
16 say anything to them regarding this case. If you do, then  
17 you'll be on the second row and we'll have a hearing regarding  
18 that. But I don't anticipate that problem. But the first  
19 category is probably the more likely scenario. Don't say  
20 anything among yourselves because there are going to be so  
21 many people around that might overhear what you say. So don't  
22 talk about the case until you are on your way home this  
23 evening.

24           All right. So for now, if you would exit and go down  
25 that way to that waiting area down there. Thank you.



1 MR. J. BAILEY: I'll speak to them. We'll excuse  
2 them until after the jury is picked. Your Honor, I notice  
3 that the chairs are now tied together. It's a little  
4 different than the way they used to be. May I take this chair  
5 and put it behind us but a little closer for the defendant?

6 THE COURT: No, I think y'all can talk to him  
7 easily enough. It's all of two feet behind Mr. Walter Bailey,  
8 a foot and a half maybe. I just don't see any problem.  
9 They're tied together for obvious security reasons. And I  
10 think he's fine right where he is. We're going to keep the  
11 procedure the way it always is.

12 MR. J. BAILEY: Thank you, Judge.

13 THE COURT: Yes, sir. All right. Ask the jurors  
14 to step in, please.

15 (Prospective jurors present.)

16 THE COURT: Okay. Good morning, ladies and  
17 gentlemen. I think since we don't have quite enough seating,  
18 I think the first thing we'll do is call 18 of you to the  
19 front and that will free up enough seating for everybody and a  
20 couple of the gentlemen that are standing. So, Officer  
21 Lafferty, if you would call 18 jurors to the front, please.

22 DEPUTY LAFFERTY: 12.

23 THE COURT: William Berry.

24 DEPUTY LAFFERTY: 18.

25 THE COURT: Margaret Bryson.

1 DEPUTY LAFFERTY: 8.  
2 THE COURT: Susan Lowery.  
3 DEPUTY LAFFERTY: 52.  
4 THE COURT: Danny Matthews.  
5 DEPUTY LAFFERTY: 24.  
6 THE COURT: Mary Brooks.  
7 DEPUTY LAFFERTY: 2.  
8 THE COURT: Earl Mitchell.  
9 DEPUTY LAFFERTY: 45.  
10 THE COURT: Frances Brock.  
11 DEPUTY LAFFERTY: 35.  
12 THE COURT: Jerry McCollum.  
13 DEPUTY LAFFERTY: 43.  
14 THE COURT: Phillip Yeager.  
15 DEPUTY LAFFERTY: 34.  
16 THE COURT: Jacqueline Green.  
17 DEPUTY LAFFERTY: 40.  
18 THE COURT: Robin Smith.  
19 DEPUTY LAFFERTY: 17.  
20 THE COURT: Brenda Hill.  
21 DEPUTY LAFFERTY: 47.  
22 THE COURT: Victoria Jenkins.  
23 DEPUTY LAFFERTY: 16.  
24 THE COURT: Marquinet Hence.  
25 DEPUTY LAFFERTY: 44.

1 THE COURT: Luis Guerrero.

2 DEPUTY LAFFERTY: 5.

3 THE COURT: Helen Anderson.

4 DEPUTY LAFFERTY: 41.

5 THE COURT: Janet Russell.

6 DEPUTY LAFFERTY: 29.

7 THE COURT: Darline Jordan.

8 All right. Now let me ask all of you up front and in  
9 the audience to stand and raise your right hands to be sworn  
10 in as prospective jurors.

11 (Prospective jurors sworn.)

12 THE COURT: Thank you, you may be seated. Welcome  
13 to Division 5 of Criminal Court. I'm Judge Joseph Dailey.  
14 The matter for your consideration this week if you're chosen  
15 to serve on this jury is Indictment Number 05-03038, charging  
16 the defendant Vern Braswell with the offense of murder in the  
17 first degree. Mr. Braswell is represented by Mr. Walter  
18 Bailey and Mr. J. Bailey. State of Tennessee is represented  
19 by Ms. Amy Weirich and Ms. Betsy Carnesale.

20 The phase of the trial that we're beginning right now  
21 of course is the jury selection phase. That will last  
22 probably the rest of the day. In just a few minutes we'll  
23 stop for lunch, but we'll resume after lunch and it will  
24 probably last for the rest of the day. Once the jury has been  
25 selected and the alternate jurors, then probably tomorrow

1 morning we'll swear the jury in.

2 After that the indictment will be read by the  
3 prosecutors. The indictment is the written document that's in  
4 this folder that let's the defendant know exactly what he's  
5 been charged with. It's not evidence, cannot be considered by  
6 you as evidence, but it will be read to you and a not guilty  
7 plea will be entered on behalf of the defendant.

8 Following that, the opening statements will be given by  
9 the attorneys. Opening statements are intended to provide the  
10 jury with some idea of what the lawyers think the proof will  
11 be in the case so that you aren't totally in the dark as you  
12 begin hearing the witnesses in the case. So opening  
13 statements will be given by the attorneys representing each  
14 side.

15 After that then the prosecutors, Ms. Weirich and  
16 Ms. Carnesale will present their proof. They'll call their  
17 witnesses to this witness stand and elicit sworn testimony.  
18 They may introduce exhibits or photographs, things of that  
19 sort as well. They have the burden, of course, of going  
20 forward first because they have the burden of proving the  
21 case.

22 When they've completed their proof, then the defense  
23 may present proof, if they care to, although they're not  
24 required to. They're not required to present any proof at  
25 all, although they may if they care to. And if their decision

1 is to present no proof, then you can draw no inference  
2 whatsoever from that decision. You cannot hold it against the  
3 defendant in any way if he chooses to present no proof. It's  
4 entirely his prerogative.

5 Once all the proof has been presented, then the  
6 attorneys will give their final arguments. And then following  
7 that, I will read to the jury the law in the case, all the law  
8 that you'll need to know in deciding this case will be read to  
9 you by me at the end of the trial.

10 Then following that, the jury will be allowed to begin  
11 its deliberations. So basically, that's the step-by-step  
12 procedure that we'll be following this week during the course  
13 of this trial.

14 As I indicated, we'll be selecting the jury today. Let  
15 me explain a little bit about the jury in this trial. The  
16 jury in this case, once it's selected will be sequestered. So  
17 you will be guests of the County for the duration of the trial  
18 once the jury has been selected and sworn in.

19 That won't begin until tomorrow morning. Even if we  
20 begin the jury selection process today, which I anticipate we  
21 will, we'll stop for the day. We won't swear you in as jurors  
22 until tomorrow morning so everyone will be allowed to go home  
23 tonight and return tomorrow morning with your suitcase, in  
24 essence to stay with us for the duration of the trial at that  
25 point.

1           Now, I anticipate that the trial will last four or five  
2 days. It will take the better part of the week, but I don't  
3 anticipate it spilling over into next week so I don't see that  
4 as any realistic possibility. But it probably will take the  
5 bulk of this week.

6           Having said that, let me say that we all understand any  
7 time we select a sequestered jury in these courts that there  
8 will be some people who inevitably have some conflict that  
9 they simply cannot avoid and cannot reschedule and cannot get  
10 around and, therefore, can't serve on a sequestered jury and I  
11 understand that there will be some that are in that situation.  
12 But I urge all of you to give as much thought as possible to  
13 making yourselves available to serve as jurors this week on  
14 this case if you're asked to do so because it's very important  
15 that we have the full participation of as many citizens as  
16 possible on the trials that we hold down here in these  
17 courtrooms. And so I would ask that you all make every effort  
18 possible to make yourselves available to serve on the jury if  
19 you're asked to do so.

20           And as I indicated, if you are selected to serve on the  
21 jury, you won't be sequestered until tomorrow at the earliest.  
22 So everyone will be allowed to go home tonight and explain to  
23 your family that you're on a sequestered jury and that sort of  
24 thing.

25           So I think with that explanation before we go further,

1 we'll stop for lunch at this time. Let me give a few cautions  
2 to you before we break for lunch. First, I'll ask all of you  
3 to be back at 1:30. Those of you that are up front in just a  
4 moment will go with Officer Lafferty. He'll show you where  
5 our jury room is. I'll ask you to be back in the jury room at  
6 1:30. Those of you in the audience, I'll ask you to please be  
7 in the waiting area outside the courtroom where you were  
8 earlier at 1:30.

9 Do not discuss the case at all. You don't know really  
10 much about the case at this point obviously, but you do know  
11 what the charges are, who the lawyers are, that sort of thing.  
12 Just don't talk about the case at all in any way with anybody.  
13 Go to lunch and talk about other things but don't talk about  
14 this case or the criminal justice system. Don't allow anyone  
15 to approach you and discuss the case with you. Let us know if  
16 somebody tries to do that.

17 So with that, we'll see all of you at 1:30. Thank you.  
18 Y'all go with Officer Lafferty, please.

19 (Prospective jurors out.)

20 THE COURT: You can take the defendant out.

21 Mr. Bailey, it occurred to me that with your family members  
22 down here, that's probably not a good spot because the jurors  
23 that are back in the jury room are going to be coming and  
24 going right through that holding area.

25 MR. J. BAILEY: I will have them leave.

1 THE COURT: So have them leave or perhaps better  
2 yet, for now at least, would be move them down over to the  
3 Division 7 waiting area over there so these jurors can sort of  
4 file out to the elevators without, you know, sort of running  
5 all through your witnesses.

6 MR. J. BAILEY: Very well. I'll take care of it.

7 THE COURT: Thank you. We'll stand in recess  
8 until 1:30.

9 (Recess.)

10 THE COURT: Okay. With regard to the issue that  
11 we discussed this morning, my ruling is that while proof of  
12 other crimes or bad acts obviously should be scrutinized  
13 closely before admitted and obviously one has to weigh the  
14 prejudicial effect against the probative value, and obviously  
15 it cannot be allowed in for the purpose of trying to  
16 demonstrate that since he committed the one he therefore  
17 committed the other. But in this case if the proof develops  
18 as y'all have suggested it will, if the defense develops that  
19 there was some sort of deviant sexual behavior or  
20 unconventional sexual behavior that resulted in this, then the  
21 proof of these three prior bad acts and/or convictions would  
22 be extremely relevant in my opinion to prove intent and the  
23 absence of mistake.

24 Those two factors would be -- the two that come to mind  
25 right now absence of or rebuttal of accident or mistake and



1 intent would, I guess, be three factors. And I think that the  
2 relevance of that proof under those circumstances would far  
3 outweigh the prejudicial effect. The jury obviously would be  
4 given curative instructions at the time and during the charge  
5 and told how to receive that proof if they choose to believe  
6 it, then how to receive it and apply it.

7 But that's generally my ruling based on what y'all have  
8 told me this morning and what you have told me the defense  
9 plans to try to develop. And in essence, I think the same  
10 would be true if the defense were what was suggested at the  
11 bond hearing two to three months ago, that is that he went to  
12 bed and woke up three hours later and found her dead in the  
13 bathtub, show absence of accident or mistake and intent.

14 But having said all that, in my opinion this proof is  
15 only appropriately used in rebuttal. I'm going to preclude  
16 the State from getting into it in the case in chief because we  
17 don't really know what the defense -- the defendant isn't  
18 required to tell us right now what he's going to present and  
19 what he plans to develop. There have been suggestions  
20 obviously, but until we know for certain what the defense is,  
21 it's not --

22 MS. WEIRICH: Well -- and I don't mean to  
23 interrupt the Court.

24 THE COURT: Go ahead.

25 MS. WEIRICH: Along with this is the issue of --

1 and we have filed a motion for reciprocal discovery and I just  
2 found out this morning that they have a defense expert that  
3 they intend to call. I have not seen a report from this  
4 expert. I got the name. And I called his office to try to  
5 talk with him, but I don't know what he's going to say. I  
6 don't know what he's looked at. I don't know if the defendant  
7 is going to testify. All of this to say that the State would  
8 ask that there not be any mention of that defense or any  
9 expert testimony on that defense unless they can say for sure  
10 that the defendant is going to get on the stand and say he  
11 choked his wife and he choked his wife in some sex act that  
12 went horribly wrong.

13 But up until this point, to the homicide detectives, to  
14 the millions of people that he called that night on both his  
15 home phone and his cell phone, he's been repeating the same  
16 story, that they were having sex at 1:30 in the morning. He  
17 went to bed. She got up to take a bath. He got up two hours  
18 later and she was dead.

19 So I guess it's -- the other reason the State filed the  
20 request to produce the 404(b) evidence is to identity, which  
21 is something we have to prove. If he's the only other adult  
22 in the house and he's saying he doesn't know what happens, why  
23 should we be hamstrung, depending on what the defense is going  
24 to be, and furthermore, they should not be allowed to throw  
25 that defense out to the jury unless they can tell Your Honor

1     that yes, he's going to take the stand and yes, he's going to  
2     admit to doing it.

3             But again, I don't know what their expert is going to  
4     say because I've not seen a report. I don't know anything. I  
5     couldn't get through to Mr. Schwartz during the lunch break so  
6     I don't know.

7             THE COURT: Mr. Bailey.

8             MR. J. BAILEY: I'm sorry, Judge.

9             MR. W. BAILEY: Your Honor, our response is  
10    obvious that we're not precluded from -- as long as we in good  
11    faith pose questions to potential jurors, then we are at  
12    liberty to do it, as long as -- we couldn't do it if we  
13    weren't in good faith in terms of questions we asked.

14            THE COURT: Well, then I suppose that opens up the  
15    -- if y'all go forward in good faith during voir dire and  
16    opening statement, advancing the defense that was alluded to  
17    earlier this morning, then I will allow the State in good  
18    faith to go forward with their 404(b) proof.

19            The only way -- the only reason I indicated that it  
20    should only be used in rebuttal is that at this point we don't  
21    know what the defense will prove to be. But if y'all are  
22    stating in good faith that this is what the defense is going  
23    to be, then -- then I think the State should not be handcuffed  
24    at this point and be precluded from responding to that. So  
25    that's -- that's where we are.

1           MR. W. BAILEY: Well, we do plan to inquire of the  
2 jury for various reasons on the issue of erotic asphyxiation  
3 or asphyxiafilia. And we wouldn't raise that or we wouldn't  
4 submit those inquiries with the jury during voir dire unless  
5 we had some good faith basis for doing it.

6           THE COURT: Well, that's fine. But again, I think  
7 the record should reflect clearly -- as far as I know from  
8 what y'all have told me today, Mr. J. Bailey announced --  
9 maybe it was Mr. Walter Bailey this morning for the first time  
10 that I've heard, that you have an expert witness coming and  
11 that he cannot be here on Thursday.

12           MR. W. BAILEY: That's correct.

13           THE COURT: And Ms. Weirich has stated that even  
14 though she has asked for reciprocal discovery, today was the  
15 first she's heard that y'all had an expert witness, hadn't  
16 received a report, hasn't received a name and phone number,  
17 any way to contact him, find out what's going on with it. So  
18 we're still going forward with the trial, but if you're going  
19 to advance that defense, which is for the first time today on  
20 trial date December 5th make known to anyone, then I believe  
21 that the State should be entitled to go forward with their  
22 404(b) proof. It would not be necessary to require that it be  
23 considered rebuttal proof.

24           And we may -- we may revisit the fact of the identity  
25 factor later, depending on what the proof proves to be. If

1 the defense -- if they revert to the defense that was  
2 suggested during the bond hearing, then identity may be a  
3 factor.

4 MS. WEIRICH: Yes, sir.

5 THE COURT: If they proceed with this defense of  
6 the asphyxiation during a sexual act, then identity may well  
7 not be a factor. So we'll revisit that later.

8 MR. J. BAILEY: Thank you, Judge.

9 THE COURT: Is there a report that was generated  
10 by your expert?

11 MR. W. BAILEY: No, sir, we do not have a report.

12 THE COURT: Is there any reason why you waited  
13 until trial date to apprise the State of the fact that you  
14 intend to call an expert in this case?

15 MR. W. BAILEY: Well, we're not -- we don't feel  
16 that we were compelled but the short answer, Judge, is we just  
17 made contact with him after diligently trying to pursue  
18 experts in the field and got a commitment out of him to  
19 testify. But we do not have any sort of written report.

20 THE COURT: All right. Bring in the jurors,  
21 please. Ask the jurors to step in from outside, please.

22 (Prospective jurors present.)

23 THE COURT: All right. Ladies and gentlemen, let  
24 me get a little bit of background information from you at this  
25 time. Mr. Berry, are you employed, sir?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Where?

3 PROSPECTIVE JUROR: Mueller Industries.

4 THE COURT: I'm sorry?

5 PROSPECTIVE JUROR: Mueller Industries.

6 THE COURT: What type of industry is that?

7 PROSPECTIVE JUROR: They're a manufacturing  
8 company but I'm a network administrator.

9 THE COURT: Okay. How long have you been with  
10 them?

11 PROSPECTIVE JUROR: A year and a half.

12 THE COURT: And could you stay with us starting  
13 tomorrow on a sequestered jury for several days?

14 PROSPECTIVE JUROR: Yes, I can.

15 THE COURT: Thank you. And, Ms. Bryson, are you  
16 employed?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Okay. And could you stay with us  
19 starting tomorrow on a sequestered jury for several days?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you. And, Ms. Lowery, are you  
22 employed?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Where?

25 PROSPECTIVE JUROR: Time Warner Telecom.

1 THE COURT: How long have you been with them?

2 PROSPECTIVE JUROR: Nine years.

3 THE COURT: What do you do for them?

4 PROSPECTIVE JUROR: Sales engineer.

5 THE COURT: Could you stay with us starting

6 tomorrow on a sequestered jury for several days?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Thank you. Mr. Matthews, are you  
9 employed?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Where?

12 PROSPECTIVE JUROR: Division of Corrections.

13 MS. WEIRICH: I'm sorry, Judge.

14 THE COURT: Division of Corrections. Where are  
15 you assigned, specifically?

16 PROSPECTIVE JUROR: Manager over fire safety and  
17 sanitation.

18 THE COURT: Manager over where?

19 PROSPECTIVE JUROR: Fire safety and sanitation,  
20 heat control.

21 THE COURT: At which facility?

22 PROSPECTIVE JUROR: Correctional Center.

23 THE COURT: Shelby County Correctional Center?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: How long have you been out there?

1 PROSPECTIVE JUROR: 17 years.

2 THE COURT: Obviously, during those 17 years  
3 you've come in contact with a lot of inmates at the  
4 Correctional Center.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: And that does not automatically  
7 exclude you from a jury, but I would need to ask you whether  
8 there has been anything over the past 17 years about your job  
9 at the Correctional Center that would affect your ability to  
10 be fair and impartial on a jury of this sort in this  
11 particular type of case?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: You think you could set all that aside  
14 and listen to the proof that you hear this week and render a  
15 verdict based solely on the proof and the law that I would  
16 read to you at the end of the trial?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you. And could you stay with us  
19 on a sequestered jury starting tomorrow?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you, sir. And, Ms. Brooks, are  
22 you employed?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Where?

25 PROSPECTIVE JUROR: Memphis Pathology Labs.



1 THE COURT: How long have you been there?

2 PROSPECTIVE JUROR: About ten years.

3 THE COURT: What do you do for them?

4 PROSPECTIVE JUROR: I'm a phlebotomist.

5 THE COURT: And could you stay with us starting  
6 tomorrow on a sequestered jury for several days?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Thank you, ma'am. Mr. Mitchell, are  
9 you employed?

10 PROSPECTIVE JUROR: Retired.

11 THE COURT: From where?

12 PROSPECTIVE JUROR: America West Airlines.

13 THE COURT: And could you stay with us starting  
14 tomorrow on a sequestered jury?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you. Ms. Brock, are you  
17 employed?

18 PROSPECTIVE JUROR: I'm retired.

19 THE COURT: From where?

20 PROSPECTIVE JUROR: Owned a business with two  
21 other people, O.D.A. Jewelry, jewelry designers.

22 THE COURT: And could you stay with us starting  
23 tomorrow on a sequestered jury?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Thank you, ma'am. Mr. McCollum, are

1       you employed?

2                   PROSPECTIVE JUROR:   Retired.

3                   THE COURT:   From where?

4                   PROSPECTIVE JUROR:   Memphis Light Gas and Water.

5                   THE COURT:   All right, sir.   And could you stay  
6       with us starting tomorrow on a sequestered jury?

7                   PROSPECTIVE JUROR:   Yes, sir.

8                   THE COURT:   Thank you, sir.   Mr. Yeager, are you  
9       employed?

10                  PROSPECTIVE JUROR:   Yes, sir.

11                  THE COURT:   By whom?

12                  PROSPECTIVE JUROR:   Fleischmann's Yeast.

13                  THE COURT:   And what do you do for them?

14                  PROSPECTIVE JUROR:   Control room operator.

15                  THE COURT:   Do they have a factory facility here  
16       in Shelby County?

17                  PROSPECTIVE JUROR:   Yes.

18                  THE COURT:   How long have you been with them?

19                  PROSPECTIVE JUROR:   15 years.

20                  THE COURT:   Okay.   And could you stay with us  
21       starting tomorrow on a sequestered jury?

22                  PROSPECTIVE JUROR:   Yes, sir.

23                  THE COURT:   Thank you.   Ms. Green, are you  
24       employed?

25                  PROSPECTIVE JUROR:   I'm Ms. Green.

1 THE COURT: You're Ms. Green. Okay. Could y'all  
2 swap seats, please. Now, Ms. Green, are you employed?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Where?

5 PROSPECTIVE JUROR: Internal Revenue Service  
6 center.

7 THE COURT: How long have you been there?

8 PROSPECTIVE JUROR: 15 years.

9 THE COURT: What do you do for them currently?

10 PROSPECTIVE JUROR: Customer service rep.

11 THE COURT: And could you stay with us starting  
12 tomorrow on a sequestered jury?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you. Ms. Smith, are you  
15 employed?

16 PROSPECTIVE JUROR: Yes. My name was Lorna Smith.  
17 Yes, I am.

18 THE COURT: Okay. What is your name now?

19 PROSPECTIVE JUROR: It's Chiodo, spelled  
20 C-H-I-O-D-O.

21 THE COURT: Okay. And where are you employed now,  
22 Ms. Chiodo?

23 PROSPECTIVE JUROR: Fed Ex Express.

24 THE COURT: How long have you been with them?

25 PROSPECTIVE JUROR: 17 years.

1 THE COURT: Okay. Could you stay with us on a  
2 sequestered jury starting tomorrow?

3 PROSPECTIVE JUROR: I guess.

4 THE COURT: Thank you. Ms. Hill, are you  
5 employed?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Where?

8 PROSPECTIVE JUROR: Memphis Orthopaedic Group.

9 THE COURT: How long have you been there?

10 PROSPECTIVE JUROR: 22 years.

11 THE COURT: What do you do for them?

12 PROSPECTIVE JUROR: I'm an orthopaedic technician.

13 THE COURT: Could you stay with us starting  
14 tomorrow on a sequestered jury?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you, ma'am. Ms. Jenkins, are  
17 you employed?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Where?

20 PROSPECTIVE JUROR: Former Union Planters now  
21 Regions Bank.

22 THE COURT: What do you do for them?

23 PROSPECTIVE JUROR: I'm an accountant.

24 THE COURT: How long have you been with them?

25 PROSPECTIVE JUROR: 18 years.

1 THE COURT: How many?

2 PROSPECTIVE JUROR: 18 years.

3 THE COURT: And could you stay with us starting  
4 tomorrow on a sequestered jury?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am. Ms. Hence, are you  
7 employed?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: Where?

10 PROSPECTIVE JUROR: Whiteville Correctional  
11 Facility.

12 THE COURT: And what do you do out there?

13 PROSPECTIVE JUROR: Dentist.

14 THE COURT: Dr. Louise Blackwell out there?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: How long have you been out there?

17 PROSPECTIVE JUROR: A year and a half.

18 THE COURT: And could you stay with us starting  
19 tomorrow on a sequestered jury?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: I guess I'll ask you the same  
22 questions I asked Mr. Matthews. Working in a correctional  
23 facility, is there anything about your experiences there, what  
24 you've heard, what you've seen, that you think would interfere  
25 with your ability to sit fairly and impartially on a jury of

1       this sort?

2                   PROSPECTIVE JUROR: Sort of. I have had a couple  
3 of inmates that did not appreciate the policy that we have as  
4 far as their treatment, so, you know, that kind of makes  
5 things a little uncomfortable, knowing that if -- it's  
6 possible that I could run across this inmate again or this  
7 person again at my facility.

8                   THE COURT: Right. Well, I appreciate that and  
9 understand that, but those were incidents obviously unrelated  
10 to this case. And you think though that you could listen to  
11 this proof this week and base a verdict on what you hear this  
12 week?

13                   PROSPECTIVE JUROR: It would be hard because, I  
14 mean, the situations I've had have been with people that have  
15 been accused of the same type crime.

16                   THE COURT: So you think that might spill over  
17 into your thought process and affect your ability to listen to  
18 the proof in this case with a totally open mind?

19                   PROSPECTIVE JUROR: Yes, sir.

20                   THE COURT: All right. Then, Doctor, I'll excuse  
21 you. Thank you for being here. And, please, return to the  
22 large jury room across the street. Mr. Guerrero, are you  
23 employed?

24                   PROSPECTIVE JUROR: Yes, sir.

25                   THE COURT: Where?

1 PROSPECTIVE JUROR: Walgreens.

2 THE COURT: Which one?

3 PROSPECTIVE JUROR: The Walgreens -- you want  
4 specific location?

5 THE COURT: Yes.

6 PROSPECTIVE JUROR: Right now on Third and Raines.

7 THE COURT: How long have you been there?

8 PROSPECTIVE JUROR: At that particular one?

9 THE COURT: With Walgreens total.

10 PROSPECTIVE JUROR: Four years.

11 THE COURT: What do you do currently at the one at  
12 Third and Raines?

13 PROSPECTIVE JUROR: Assistant manager.

14 THE COURT: And could you stay with us starting  
15 tomorrow on a sequestered jury?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you. Ms. Anderson, are you  
18 employed?

19 PROSPECTIVE JUROR: I'm retired.

20 THE COURT: From where?

21 PROSPECTIVE JUROR: State of Tennessee.

22 THE COURT: Which division of the State?

23 PROSPECTIVE JUROR: Arlington Developmental  
24 Center.

25 THE COURT: How long were you out there?

1 PROSPECTIVE JUROR: 31 years.

2 THE COURT: 31. Could you stay with us starting  
3 tomorrow on a sequestered jury?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, ma'am. Ms. Russell, are  
6 you employed?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Where?

9 PROSPECTIVE JUROR: KPC Performance Media.

10 THE COURT: How long have you been there?

11 PROSPECTIVE JUROR: 14 years.

12 THE COURT: What do you do for them?

13 PROSPECTIVE JUROR: Account manager.

14 THE COURT: Could you stay with us starting  
15 tomorrow on a sequestered jury?

16 PROSPECTIVE JUROR: I don't think so.

17 THE COURT: Why is that?

18 PROSPECTIVE JUROR: I'm a single parent and I  
19 don't have anybody that can help me with my child.

20 THE COURT: How old is your child?

21 PROSPECTIVE JUROR: He's 17 but he doesn't drive  
22 yet.

23 THE COURT: And there's no one that can fill in  
24 and help out?

25 PROSPECTIVE JUROR: I've got a brother but he's a



1 fireman and he works 24-hour shifts. So I don't know if I can  
2 find anybody that can help me.

3 THE COURT: And at age 17 though, he would not be  
4 able to --

5 PROSPECTIVE JUROR: He's not a mature 17 year old.

6 THE COURT: Well, I certainly won't challenge a  
7 mother's assessment on that. Thank you. I'll excuse you  
8 then. If you will return to the large jury room across the  
9 street. Thank you. And, Ms. Jordan, are you employed?

10 PROSPECTIVE JUROR: Self-employed.

11 THE COURT: What type of work?

12 PROSPECTIVE JUROR: Commercial cleaning service.

13 THE COURT: How long have you had that job?

14 PROSPECTIVE JUROR: We've had it seven years.

15 THE COURT: Seven years. And could you stay with  
16 us starting tomorrow on a sequestered jury?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you. If y'all would move down,  
19 please, and call two more jurors.

20 DEPUTY LAFFERTY: 11.

21 THE COURT: Hilary Moss.

22 DEPUTY LAFFERTY: 49.

23 THE COURT: Martha Sparks.

24 Ms. Moss, are you employed?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Where?

2 PROSPECTIVE JUROR: Brother Industries.

3 THE COURT: How long have you been there?

4 PROSPECTIVE JUROR: 15 years.

5 THE COURT: Could you stay with us starting  
6 tomorrow on a sequestered jury?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you. Ms. Sparks, are you  
9 employed?

10 PROSPECTIVE JUROR: Self-employed.

11 THE COURT: What type of work?

12 PROSPECTIVE JUROR: Childcare.

13 THE COURT: Okay. And could you stay with us  
14 starting tomorrow on a sequestered jury?

15 PROSPECTIVE JUROR: Sure.

16 THE COURT: Thank you. Ms. Weirich.

17 MS. WEIRICH: Thank you, Your Honor. Good  
18 afternoon. As Judge Dailey told you my name is Amy Weirich  
19 and along with Betsy Carnesale, we work for your District  
20 Attorney General, Bill Gibbons. We represent the people of  
21 the State of Tennessee in this matter that you've been called  
22 over here to consider, okay.

23 Voir dire, this part of the jury selection that we're  
24 going through, this part of the trial is set aside so that we  
25 can select 12 jurors that are best suited to hear this

1 particular case. All right. And that's why you took an oath  
2 to tell the truth and answer the questions honestly because  
3 under the laws of the State of Tennessee, both sides in a  
4 criminal case, the State of Tennessee and the Defendant, are  
5 entitled to a fair trial. All right. That's the ultimate  
6 goal at the end of the day. That's why we go through this  
7 process of asking you all some questions and trying to get to  
8 know you a little bit better to make sure that that objective  
9 is met. All right. Does everybody kind of understand that?  
10 Voir dire or voir dire in French means to tell the truth and  
11 that's basically what we're doing right now.

12 When you or if you are selected as a juror in this  
13 case, you will go through the process that Judge Dailey spoke  
14 of before lunch. You will hear the indictment read to you.  
15 You will listen to the opening statements. You will hear  
16 witnesses take the stand and be questioned by both sides of  
17 the table, representatives of the State of Tennessee and  
18 defense attorneys.

19 After all of the proof is in, you will listen to the  
20 closing arguments. And then Judge Dailey will read to you the  
21 law that applies to this particular case. Okay. So if any of  
22 you have ever served on jury service before, served on jury  
23 duty before, you may hear something from Judge Dailey that  
24 differs from what you remember from your prior experience.  
25 Can you promise me that you'll focus on what Judge Dailey

1 tells you and follow the law that he gives you?

2 All right. And when it's read to you, it will be a lot  
3 of words that are kind of weird that we're not used to  
4 listening to everyday and kind of don't make a lot of sense,  
5 but I'm going to try to go through a few of those with you  
6 this afternoon. But rest assured that when you go back to the  
7 jury room, you're going to have the charge in front of you.  
8 You're going to have all of the law that applies to this case  
9 typed out for you, for you to look at and review. Okay?

10 When you go back there, you'll be sent back with the  
11 charge, but you'll also be sent back there with three tools,  
12 okay. And they are the tools that you must use in your  
13 deliberation process. The first tool that you will use as a  
14 juror is the evidence. Evidence comes in the form of real  
15 live people that will walk through that back door, take an  
16 oath to tell the truth just as you've done, and they'll sit in  
17 that chair and they'll answer questions. They're not actors.  
18 We've not had a rehearsal, all right. They'll answer to the  
19 best of their ability the questions posed to them. And you'll  
20 listen.

21 Evidence also can come in the form of items that can't  
22 speak; pictures or tangible items, things like that that will  
23 sit on this table. You'll also get to take those back with  
24 you to the jury room. So you'll have the evidence.

25 The second tool is the law. It comes from Judge

1 Dailey. I'm going to talk to you a little bit about it this  
2 afternoon. And we'll talk to you more about it in opening  
3 statement and in the closing argument. If any of us tells you  
4 something that differs from what Judge Dailey tells you,  
5 please listen to what Judge Dailey tells you, okay. That's  
6 where the law comes from.

7 The third tool is your common sense; your good,  
8 old-fashioned common sense that all of you use everyday at  
9 work, at home, with your neighbors, with your in-laws,  
10 whatever. We all use our common sense everyday in making  
11 decisions. And we want you to bring that same common sense  
12 with you to the jury room. Can all of you promise you will?

13 All right. Before I talk to you about the law, there  
14 are -- there are two things for which there is no room in this  
15 courtroom Division 5 of the Criminal Courts of Shelby County  
16 or in any other. And it's the reason that lady liberty is  
17 blindfolded whenever you see pictures of the scales of justice  
18 and the lady in middle with the blindfold on, there is no  
19 place in this courtroom and certainly not in that jury room  
20 for sympathy or prejudice. All right. And you'll be told  
21 that by Judge Dailey at the end, but we want that to be out  
22 here in the front today as we begin this process.

23 So can all of you promise that the only tools you will  
24 use are the evidence, the law, and your common sense and that  
25 you will not allow sympathy nor prejudice to step into that

1 jury room? Can you promise us that? Okay. All right. Yes,  
2 sir?

3 PROSPECTIVE JUROR: I had two people very dear to  
4 me get murdered and it will be very difficult for me.

5 MS. WEIRICH: Okay. And that's one of my  
6 questions that I will pose to everyone, that very situation.  
7 And by the fact that it's that much on your mind right now,  
8 they were both murdered?

9 PROSPECTIVE JUROR: Yes.

10 MS. WEIRICH: How long ago was that?

11 PROSPECTIVE JUROR: About six years.

12 MS. WEIRICH: And were they murdered together or  
13 was it two separate incidents?

14 PROSPECTIVE JUROR: Separate.

15 MS. WEIRICH: Okay. And because of that life  
16 experience that you've had to endure, you think it might be  
17 difficult for you to listen to this proof with an open mind?

18 PROSPECTIVE JUROR: Yes.

19 MS. WEIRICH: All right. Judge, I'd pass for  
20 cause.

21 THE COURT: All right. Mr. Matthews, I'm sorry to  
22 hear about your situation. I appreciate you bringing that to  
23 our attention and I'll excuse you at this time. If you would  
24 return to the large jury room across the street, please. You  
25 may proceed.

1 MS. WEIRICH: Thank you. Did you have your hand  
2 raised?

3 PROSPECTIVE JUROR: No.

4 MS. WEIRICH: Okay. That's why we go through this  
5 line of questioning. Just because something that may have  
6 happened in your past may not suit you best for this  
7 particular case, you might be better suited for another trial  
8 that's going on. We talked about the three tools and the two  
9 things that there's no room for.

10 Let me talk to y'all a little bit about some legal  
11 terms, okay, before I get into some specific questions for  
12 each of you. Thanks to John Grisham and all of the Hollywood  
13 movies and all of the TV shows that seem to inundate our  
14 lives, there are a lot of legal terms that are thrown around  
15 on TV and in books and in Hollywood movies and sometimes  
16 they're used incorrectly. And so what I want to do is kind of  
17 switch the tables a little bit and get your focus on what the  
18 law of the State of Tennessee is because that's what will  
19 control your job as jurors this week.

20 The first one of those phrases is the one "beyond a  
21 reasonable doubt." Okay. We hear it all the time. Sometimes  
22 you hear "beyond a shadow of a doubt, beyond all doubt." I  
23 think there's even been a book titled *Beyond a Reasonable*  
24 *Doubt*. In the State of Tennessee, it's as helpful I think to  
25 talk about what beyond a reasonable doubt does not mean as it

1 is to talk about what it means.

2 All right. We talk about beyond a reasonable doubt  
3 because the State of Tennessee, Ms. Carnesale and I, have the  
4 burden, have the job, have the responsibility of proving to  
5 you that the defendant is guilty of murder in the first  
6 degree. And we have to prove that to you beyond a reasonable  
7 doubt.

8 Now I'm going to talk to you in a minute about what  
9 murder first degree means. But first of all, let's talk about  
10 beyond a reasonable doubt. What it means is that the State of  
11 Tennessee has to prove the elements of the crime of murder  
12 first degree, the ingredients that go into making murder in  
13 the first degree in the State of Tennessee. You will not be  
14 told by Judge Dailey or anyone else that the State of  
15 Tennessee has to answer every one of your questions, okay.  
16 Sometimes we can. A lot of times we can't.

17 You will not be told that the State of Tennessee has to  
18 prove beyond all doubt that the defendant is guilty of murder  
19 in the first degree. You're probably thinking but yeah,  
20 Ms. Weirich, we're talking about murder in the first degree.  
21 Shouldn't you be held to a higher burden? No. The burden is  
22 the same whether we're talking about someone's car being  
23 stolen or someone's life being taken. It's beyond a  
24 reasonable doubt.

25 If at the end of this trial you go back in the jury



1 room and you start going through the elements of murder in the  
2 first degree; intentionally and with premeditation did kill  
3 Sheila Braswell, if you start going through those elements and  
4 you have a doubt as to whether or not we've proved one of  
5 them, you have to take it another step and you have to ask  
6 yourself is my doubt a reasonable one or am I getting hung up  
7 on things that don't matter? Am I getting hung up on  
8 insignificant issues that are not relevant to the elements of  
9 the case, intentional killing with premeditation. Okay. If  
10 your doubt is a reasonable one, then we've not done our job.  
11 But if your doubt is one based on the what-ifs, the might  
12 haves, the could haves, the oh, yeah it could have been, then  
13 it's not reasonable and you're getting hung up on irrelevant  
14 issues. And we have done our job, okay. The reasonable in  
15 that phrase is capitalized. All right? Does that make sense  
16 to everybody?

17 Do you agree or do you understand how difficult it  
18 would be for Ms. Carnesale and I to prove to you beyond all  
19 doubt that something happened? What would you have to do to  
20 be convinced beyond all doubt that something happened?

21 PROSPECTIVE JUROR: See it yourself.

22 MS. WEIRICH: You'd have to see it yourself,  
23 wouldn't you? And even then if Officer Lafferty were to come  
24 over here right now and knock me over and Judge Dailey were to  
25 send all of you to the back to write down what you just saw,

1     how many different versions would we have? As many people as  
2     we have sitting here, wouldn't we? And that's just a human  
3     trait. Some of you are focused on me. Some of you are  
4     looking at me, probably wondering about whether your kids got  
5     home safe from school, what are you going to make for dinner  
6     tonight, how long is this trial going to last, what's going on  
7     at the office while I'm not there. The law allows for those  
8     human characteristics and doesn't make the burden beyond all  
9     doubt. That's why we need 12 eyes and ears, okay? Does that  
10    make sense to everybody?

11           Okay. All right. That's one of the terms and it's  
12    kind of the big umbrella over everything we do. I think at  
13    the end of the trial Judge Dailey will instruct you first  
14    degree murder in the State of Tennessee in this particular  
15    case the State must prove that the defendant unlawfully killed  
16    the victim and that the defendant acted intentionally.

17           Intentionally. Intent. It's a word that shows up in a  
18    lot of legal settings but it's also a word we use everyday.  
19    How can you tell what somebody's intent is? I'll tell you  
20    right now we're not going to have anybody walk in with a  
21    crystal ball to tell you that on November 5th, 2004, the  
22    defendant's intent was X, Y and Z. How can we tell what  
23    people meant to do or say? By their what?

24           PROSPECTIVE JUROR: Actions.

25           MS. WEIRICH: By their actions, by their words,

1 those types of things. All right. So even if it's a word  
2 that shows up in a fluffy jury instruction, intentionally is  
3 the same way that you're used to using it, in the same way  
4 you're used to thinking about it. You look to people's  
5 actions and words to discern what they intended to do, whether  
6 they acted intentionally. And that the killing was  
7 premeditated. That's another word that gets kind of twisted  
8 around in Hollywood. What does premeditated mean?

9 PROSPECTIVE JUROR: Plan out.

10 MS. WEIRICH: Plan, yes. One thing that it  
11 doesn't mean, there's no set time. There's no clock that has  
12 to tick for a certain number of minutes for premeditation to  
13 develop, okay? It has to exist before the killing, but you're  
14 not going to hear anybody come in and testify that there was  
15 premeditation in the mind of the defendant for five minutes  
16 and six seconds on November 5th, 2004. All right. The  
17 definition, I believe this is what Judge Dailey will tell you  
18 and if he tells you something different, listen to him. A  
19 premeditated act is one done after the exercise of reflection  
20 and judgment. Premeditation means that the intent to kill  
21 must have been formed prior to the act itself. It is not  
22 necessary that the purpose to kill preexist in the mind of the  
23 accused for any definite period of time. It is not required  
24 that the premeditation exist in the mind of the defendant for  
25 a certain number of seconds or minutes. Okay? Does that make

1 sense?

2 All right. Have any of you ever been the victim of a  
3 crime or have the same situation that we've already heard of,  
4 a close friend or family member that's been a victim of a  
5 violent crime? Let me start in the back row just to keep  
6 myself -- yes, ma'am?

7 PROSPECTIVE JUROR: It wasn't a violent crime but  
8 I have been burglarized.

9 MS. WEIRICH: Okay. And how long ago was that?

10 PROSPECTIVE JUROR: Five years.

11 MS. WEIRICH: All right. Were you home?

12 PROSPECTIVE JUROR: No.

13 MS. WEIRICH: Okay. Were you at work when it  
14 happened?

15 PROSPECTIVE JUROR: I had left and went to the  
16 grocery store.

17 MS. WEIRICH: Was anyone ever arrested?

18 PROSPECTIVE JUROR: No.

19 MS. WEIRICH: Did they take a lot of things? A  
20 few things?

21 PROSPECTIVE JUROR: Yes.

22 MS. WEIRICH: A lot of things?

23 PROSPECTIVE JUROR: Yes.

24 MS. WEIRICH: All right. The police were called?

25 PROSPECTIVE JUROR: Yes.

1 MS. WEIRICH: I assume. And they came out?

2 PROSPECTIVE JUROR: Yes.

3 MS. WEIRICH: Okay. A report was taken and all of  
4 those things. You told them what was taken from your house  
5 and you crossed your fingers and hoped that they'd call you  
6 back and tell you we found your stuff and that never happened?

7 PROSPECTIVE JUROR: No.

8 MS. WEIRICH: Anything about -- and the reason we  
9 ask this question, and it may not seem clear to you since it's  
10 just a burglary and this is a murder case, but if you were  
11 treated either so poorly by the Memphis Police Department or  
12 so wonderfully by the Memphis Police Department, that after  
13 that point you vowed to either never believe another word a  
14 police officer told you or to believe anything a police  
15 officer told you, that's the kind of thing we'd need to know.  
16 When officers come in here, we want you to listen to their  
17 testimony and judge it the same way everybody else does. Do  
18 you see what I mean?

19 PROSPECTIVE JUROR: Uh-huh.

20 MS. WEIRICH: Is there anything about having gone  
21 through that, that will keep you from giving both sides of  
22 this case a fair trial?

23 PROSPECTIVE JUROR: No.

24 MS. WEIRICH: Anybody else on the back row?

25 PROSPECTIVE JUROR: Same thing.

1 MS. WEIRICH: And same question to you. Was there  
2 anything about having gone through that that would keep you  
3 from giving both sides of this case the State and Defendant a  
4 fair trial?

5 PROSPECTIVE JUROR: (Shook head left to right.)

6 MS. WEIRICH: All right. Anybody -- did I get  
7 everybody back there? Anybody on the middle row? And the  
8 front row, yes, ma'am?

9 PROSPECTIVE JUROR: My sister was murdered by her  
10 husband.

11 MS. WEIRICH: How long ago was that?

12 PROSPECTIVE JUROR: I was a child but I can  
13 remember.

14 MS. WEIRICH: Okay. All right. And it was here  
15 in Memphis?

16 PROSPECTIVE JUROR: Well, it wasn't in Memphis.  
17 They lived in Mississippi.

18 MS. WEIRICH: All right. Here the defendant is  
19 accused of killing his wife. Do you think that would be  
20 something that might be difficult for you to listen to with an  
21 open mind, given what your family went through?

22 PROSPECTIVE JUROR: I think so. I think so  
23 because as a child I kind of, like, formed opinions at that  
24 time and they have not left.

25 MS. WEIRICH: Okay. All right. I'll pass for

1       cause, Your Honor.

2               THE COURT:   Okay.   Ms. Anderson, right?

3               PROSPECTIVE JUROR:   Right.

4               THE COURT:   I'll excuse you, Ms. Anderson.   Thank  
5       you.

6               MS. WEIRICH:   Should I proceed?

7               THE COURT:   Sure.

8               MS. WEIRICH:   Thank you.   Anyone else on the front  
9       row?   Have any of you ever been -- and I'm going to use all  
10      the words that are used -- arrested, convicted, indicted,  
11      charged with a crime?   Anybody?   Yes, sir?

12              PROSPECTIVE JUROR:   I've been arrested.

13              MS. WEIRICH:   Okay.   For what?

14              PROSPECTIVE JUROR:   Public drunkenness, many, many  
15      years ago.

16              MS. WEIRICH:   Many, many years ago.   All right.  
17      And they held you in jail a little time and they let you go?

18              PROSPECTIVE JUROR:   Yeah.

19              MS. WEIRICH:   All right.   Anything about that that  
20      would keep you from giving both sides a fair trial?

21              PROSPECTIVE JUROR:   No.

22              MS. WEIRICH:   Thank you for being honest.   I  
23      appreciate that.   When the jury is sworn in, in this case, you  
24      at that point the defendant will be asked how he pleads and he  
25      will stand up and enter a plea of not guilty.   At that point,

1 the challenge is made, if you will, for the State of Tennessee  
2 to prove to you that the defendant is guilty of murder in the  
3 first degree. And if you are sworn in as jurors in this case,  
4 Ms. Carnesale and I look forward to doing that. Thank you.  
5 Pass for cause, Your Honor.

6 THE COURT: Mr. Bailey.

7 MR. W. BAILEY: Thank you, Your Honor. May it  
8 please Your Honor, ladies and gentlemen of the jury, I'm as  
9 the Court has previously announced, I'm Walter Bailey. And  
10 with me trying this lawsuit is J. Bailey. The obvious  
11 question is are we related and we are. That's my son.

12 Do -- I'm going to ask you some preliminary questions  
13 and I'm going to take a little longer. And let me explain to  
14 you my purpose of this voir dire examination. My purpose is  
15 to help to obtain or to get 12 fair and impartial jurors to  
16 try this lawsuit. We're looking for people who don't have a  
17 bone to pick or an ax to grind. We're looking for people who  
18 can call, I like to use baseball terminology because everybody  
19 understands baseball, American way of life. Everybody  
20 understands a ball is a ball and strike is a strike. And  
21 that's all we are looking to obtain. We want 12 fair,  
22 balanced jurors that can call a ball a ball and a strike a  
23 strike. We don't want jurors who can lean or would be  
24 inclined to lean one way or the other.

25 Now this is not going to be a pleasant experience, no



1 trial involving first degree murder is a pleasant trial. It's  
2 not pleasant for anybody. And I want to ask you at the  
3 outset, is there anybody just by the very nature of the case  
4 itself who feels that you can't stick with us, be a fair and  
5 impartial juror and won't be so emotionally overwhelmed just  
6 by the sheer nature of the case that you wouldn't give us the  
7 benefit of your fair judgment? Anybody feel that way? Yes,  
8 ma'am?

9 PROSPECTIVE JUROR: Mr. Bailey, I don't know. I  
10 don't know what the charges are. I do not believe in the  
11 death penalty. I could not do that. I have worked in the  
12 Salvation Army Daycare Center. I have seen people that have  
13 been abused that have had no home life. My feeling is not  
14 that they should be free but I could not convict somebody to  
15 death when they have had no background of learning right from  
16 wrong. I've been around children. I've had my own school. I  
17 know the importance of a background of somebody, and I have  
18 known a lot of cases where you see that these people who do  
19 these horrible crimes, granted they should not be out, but I  
20 could not convict them to the death penalty and live with  
21 myself because I personally feel that a person's character  
22 comes from their background 90 percent of the time. And if  
23 they have not had that, I could not -- I feel like the parents  
24 should be put in jail instead of the person. I'm just telling  
25 you my personal. I don't know if this is important or not,

1 but I just feel like I need to say something.

2 MR. W. BAILEY: I appreciate that. I'm going to  
3 let the Court indulge you on that issue.

4 THE COURT: Well, Ms. Brock, thank you for that  
5 statement. This case, so you'll know so all of y'all will  
6 know, does not involve the death penalty. The State is not  
7 seeking the death penalty, and the jurors will not be charged  
8 with the responsibility of setting any punishment but it will  
9 not involve the death penalty in any way. So that should  
10 allay your concerns about that issue. Thank you.

11 PROSPECTIVE JUROR: I have a comment.

12 MR. W. BAILEY: Yes, ma'am.

13 PROSPECTIVE JUROR: You mentioned anyone being --

14 MR. W. BAILEY: Ms. Smith?

15 PROSPECTIVE JUROR: Well, that's my maiden name.

16 MR. W. BAILEY: Chiodo.

17 PROSPECTIVE JUROR: Yeah. I haven't lived there  
18 in several years. I'm a sucker for a sob story myself. I  
19 don't know, I may be sympathetic. I don't know.

20 MR. W. BAILEY: Well, the whole notion is to be  
21 able to set aside any sympathy. And all of us at some point  
22 in our life, you know, we're vulnerable. We fall for things  
23 that we sometimes get embarrassed over. That's just the way  
24 we are. We're constituted that way as human beings.

25 But the point is for you to be able to -- even though

1 you may have gut feelings or gut instincts but to follow the  
2 law and look at the evidence, look at the facts and set aside  
3 any personal feeling you may have, you're not here rooting for  
4 one team or one side or the other. You're just here to call  
5 it as you see it. And I'm going to talk to you about some of  
6 the principles of law that apply to this case that you will  
7 have to follow that we anticipate His Honor will charge you.  
8 But that's the direction in which we're going. So don't be  
9 embarrassed about your natural instincts and your natural  
10 feelings. Nobody walked in this courtroom without having  
11 natural instincts and feelings. We all do. I mean, that's  
12 just the way we're made up. Sometimes we automatically  
13 respond. We may look at a person and not like the way that  
14 person looks and immediately have some hostile vibe, but that  
15 doesn't mean you couldn't be fair to that person. Does that  
16 answer your question?

17 PROSPECTIVE JUROR: Yes.

18 MR. W. BAILEY: Thank you. And let me also point  
19 out that His Honor is going to tell you that he's the provider  
20 of the law. The judge gives you what the law is, not the  
21 lawyers. And these fine prosecutors here, they don't tell you  
22 what the law is either. They can give you their version, like  
23 I'm going to give you my version like we will. But the  
24 prosecutors don't know anymore about this case than you so  
25 consequently, we don't want you accepting anything said in the

1       voir dire or anything said in the opening statement or  
2       arguments when we get to that as being facts because we're not  
3       here to provide fact. We're only here as a conduit through  
4       which the information flows.

5               So -- and I'm glad I mentioned that because sometimes  
6       when we lawyers speak, jurors think well, we may have some  
7       special knowledge. We don't. We weren't at the scene. We  
8       don't know what happened. We're just providing you what we  
9       understand is available to be provided. That's as far as we  
10      can go.

11             Now one of the things I neglected to ask, is there  
12      anybody related or knows anyone personally in the prosecutor's  
13      office?

14             MS. WEIRICH: Ms. Brock has her hand up.

15             PROSPECTIVE JUROR: I know someone in Judge  
16      Dailey's office. I do not know anyone in the prosecutors  
17      office.

18             MR. W. BAILEY: I see. You don't know Judge  
19      Dailey personally, do you?

20             PROSPECTIVE JUROR: No, I do not.

21             MR. W. BAILEY: And anybody else? Anybody got any  
22      close relative or friend, close friend that is, who is in law  
23      enforcement? Yes, sir, Mr. Guerrero?

24             PROSPECTIVE JUROR: Yes, sir. My aunt, she's --  
25      she's not an officer but she's a probation officer so she's

1       been there for about I say 20 years.

2               MR. W. BAILEY: That wouldn't have anything to do  
3 with this case, would it?

4               PROSPECTIVE JUROR: No.

5               MR. W. BAILEY: What about you, Ms. Jordan?

6               PROSPECTIVE JUROR: I'm Ms. Jordan and I also have  
7 a son that's a policeman here in Memphis.

8               MR. W. BAILEY: Now there are going to be some  
9 police officers who are going to testify in this case, you  
10 know, officers whenever you've got a death at a scene, you  
11 have police officers who go out and investigate. That's what  
12 our fine officers do. But -- and they will testify. And His  
13 Honor is going to tell you the ground rules by which you  
14 evaluate the testimony of police officers. Now will you  
15 promise us that you will follow those ground rules? You  
16 promise that you'll evaluate the testimony of police officers  
17 the same way you would lay people, non-enforcement officers?

18              PROSPECTIVE JUROR: Yes, I will.

19              MR. W. BAILEY: You're Ms. Sparks?

20              PROSPECTIVE JUROR: Yes.

21              MR. W. BAILEY: Okay. Thank you. Yes, ma'am?

22              PROSPECTIVE JUROR: My husband is in federal  
23 criminal investigation for Internal Revenue Service.

24              MR. W. BAILEY: You're Ms. Brooks?

25              PROSPECTIVE JUROR: Yes, sir.

1 MR. W. BAILEY: Okay. But that won't have  
2 anything to do with this, will it?

3 PROSPECTIVE JUROR: No.

4 MR. W. BAILEY: You're not going to try to relate  
5 to the prosecution's side of it just because your husband is  
6 in law enforcement?

7 PROSPECTIVE JUROR: No, he's strictly tax.

8 MR. W. BAILEY: That's the general idea. We just  
9 don't want people taking sides on things that are outside this  
10 courtroom because if you do that, then we've got a tough  
11 fight. We're trying to fight more than just a battle of  
12 what's before us here in the courtroom. We've got outside,  
13 extraneous stuff that we're trying to fight here, too, and we  
14 don't want to do that. I know you're not going to put us in  
15 that position because you're going to let us know.

16 Now have any of you -- I think we've heard some of you  
17 refer to your own experiences as having been victims of crime.  
18 Any of you had close relatives or friends who have been  
19 victims of crimes? Yes, ma'am.

20 PROSPECTIVE JUROR: Yes.

21 MR. W. BAILEY: Ms. Brown, is that correct?

22 PROSPECTIVE JUROR: Ms. Bryson.

23 MR. W. BAILEY: Ms. Bryson, I'm sorry.

24 PROSPECTIVE JUROR: One of my friends, her sister,  
25 she was murdered and it's been about -- I think the kids are,

1 like, 17 so it's been about 17 years.

2 MR. W. BAILEY: Well, now Mr. Vern Braswell is  
3 sitting over here, is charged with first degree murder. Now  
4 you think you can give him the benefit of a fair trial?

5 PROSPECTIVE JUROR: My honest opinion? No.

6 MR. W. BAILEY: You don't?

7 PROSPECTIVE JUROR: No.

8 MR. W. BAILEY: You think you might -- I guess  
9 you're pretty clear on that. You're pretty candid.

10 PROSPECTIVE JUROR: I'm very clear. I don't  
11 believe so.

12 MR. W. BAILEY: Very well.

13 THE COURT: All right. Ms. Bryson, thank you.  
14 I'll excuse you at this time.

15 MR. W. BAILEY: Thank you, ma'am. Is there  
16 anybody else who's got a close friend or family member who's  
17 been the victim of a crime that would cause that experience to  
18 interfere with this process?

19 Now I'm going to ask you some personal questions. And  
20 again, it isn't out of an effort to be nosy or to probe but --  
21 Ms. Weirich, do you need a break?

22 MS. WEIRICH: No, sir. Thank you though.

23 MR. W. BAILEY: It's not out of any effort to be  
24 nosy or probe, but what we're trying to do is our way and  
25 sometimes to look at your experience and see whether based on

1 that experience that you'd be the type person we'd be  
2 comfortable with serving as a juror in this case. That  
3 doesn't mean you're a good or bad person either. Let me  
4 quickly hasten to say, if you're excluded from this panel, it  
5 doesn't mean there's something wrong with you. It simply  
6 means that we were a little edgy about based on your history  
7 and your experience and your exposure on your sitting in on  
8 this type case. And it may be that on another type case,  
9 maybe a civil case that you would be very appropriate. But in  
10 this type case it may be we may have a feeling that you're  
11 not. So I'm going to quickly starting with you, Mr. Mitchell,  
12 I understand you're retired.

13 PROSPECTIVE JUROR: Yes.

14 MR. W. BAILEY: And you worked for America West  
15 Airline?

16 PROSPECTIVE JUROR: I was a pilot with America  
17 West Airlines.

18 MR. W. BAILEY: Did you fly all over the world?

19 PROSPECTIVE JUROR: Just over this part of the  
20 world, South America, Canada, Mexico, Caribbean and all over  
21 the U.S.

22 MR. W. BAILEY: I see. And how long were you a  
23 pilot?

24 PROSPECTIVE JUROR: Totally pilot almost 30 years.  
25 I was in corporate aviation before I got in the airline.



1 MR. W. BAILEY: Corporate what, sir?

2 PROSPECTIVE JUROR: I was with the corporate  
3 aviation with different companies here in Memphis, W.R. Grace  
4 and Company, Dublin Enterprises, sharing (indiscernible) for a  
5 while.

6 MR. W. BAILEY: Now I take it are you married?

7 PROSPECTIVE JUROR: Yes.

8 MR. W. BAILEY: Do you have children?

9 PROSPECTIVE JUROR: Yes.

10 MR. W. BAILEY: How many, sir?

11 PROSPECTIVE JUROR: Two children. Two daughters.

12 MR. W. BAILEY: And does Mrs. Mitchell work?

13 PROSPECTIVE JUROR: Yes.

14 MR. W. BAILEY: What does she do, sir?

15 PROSPECTIVE JUROR: She's a school teacher.

16 MR. W. BAILEY: City or County school system?

17 PROSPECTIVE JUROR: She's in the private school  
18 system.

19 MR. W. BAILEY: Private school system.

20 PROSPECTIVE JUROR: She was in both those others  
21 though at one time.

22 MR. W. BAILEY: All right. Ms. Brooks, you're a  
23 phlebotomist?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. W. BAILEY: And what lab are you employed?

1 PROSPECTIVE JUROR: Memphis Pathology.

2 MR. W. BAILEY: And how long have you been there,  
3 ma'am?

4 PROSPECTIVE JUROR: About ten years.

5 MR. W. BAILEY: And I know there is a Mr. Brooks  
6 because you earlier mentioned him. What does he do?

7 PROSPECTIVE JUROR: He works for Internal Revenue  
8 Service as a special agent.

9 MR. W. BAILEY: Children?

10 PROSPECTIVE JUROR: Two.

11 MR. W. BAILEY: All right. And, Ms. Lowery, as I  
12 understand you work for a telecom system?

13 PROSPECTIVE JUROR: Time Warner Telecom.

14 MR. W. BAILEY: And how long have you been there?

15 PROSPECTIVE JUROR: Nine years.

16 MR. W. BAILEY: Is there a Mr. Lowery?

17 PROSPECTIVE JUROR: Yes.

18 MR. W. BAILEY: And what does he do, ma'am?

19 PROSPECTIVE JUROR: He's self-employed.

20 MR. W. BAILEY: Children?

21 PROSPECTIVE JUROR: 19 year old.

22 MR. W. BAILEY: You wouldn't have a problem  
23 calling a ball a ball and a strike a strike, would you?

24 PROSPECTIVE JUROR: No, sir.

25 MR. W. BAILEY: All right. Thank you. Mr. Berry,

1       how about you, sir? Is there a Mrs. Berry?

2               PROSPECTIVE JUROR: Yes, sir.

3               MR. W. BAILEY: And what does she do, sir?

4               PROSPECTIVE JUROR: She's a bookkeeper for a  
5       grocery store chain.

6               MR. W. BAILEY: Do you have children?

7               PROSPECTIVE JUROR: One 16 year old.

8               MR. W. BAILEY: And I understand you say you were  
9       the victim of a crime?

10              PROSPECTIVE JUROR: Yes, sir.

11              MR. W. BAILEY: What happened?

12              PROSPECTIVE JUROR: My house was broken into about  
13       eight years ago.

14              MR. W. BAILEY: Now you're not going to look at  
15       Mr. Braswell, Vern Braswell over here and hold that against  
16       him, are you?

17              PROSPECTIVE JUROR: No, sir.

18              MR. W. BAILEY: You'll give him a fair shake?

19              PROSPECTIVE JUROR: (Nodded head up and down.)

20              MR. W. BAILEY: Ms. Hill, how about you, ma'am?

21              PROSPECTIVE JUROR: I work for Memphis Orthopaedic  
22       Group. I've been there 22 years.

23              MR. W. BAILEY: Is there a Mr. Hill?

24              PROSPECTIVE JUROR: No, sir.

25              MR. W. BAILEY: And tell us a little something in

1 terms of your daily tasks at the Orthopaedic Group.

2 PROSPECTIVE JUROR: I'm the one that goes to put  
3 casts on patients, take stitches out, go to surgery with the  
4 doctors, assist clinically in the clinic area only.

5 MR. W. BAILEY: Enjoy your work?

6 PROSPECTIVE JUROR: Love it.

7 MR. W. BAILEY: And Ms. Chiodo?

8 PROSPECTIVE JUROR: Chiodo.

9 MR. W. BAILEY: I don't know why I can't --

10 PROSPECTIVE JUROR: Everybody does.

11 MR. W. BAILEY: You're at Fed Ex.

12 PROSPECTIVE JUROR: Yes.

13 MR. W. BAILEY: And your husband?

14 PROSPECTIVE JUROR: My husband's a pilot at Fed Ex  
15 as well.

16 MR. W. BAILEY: Does he do international flights?

17 PROSPECTIVE JUROR: Not right now but he has.

18 MR. W. BAILEY: You jump seat?

19 PROSPECTIVE JUROR: You know, they took that away  
20 from us.

21 MR. W. BAILEY: Children?

22 PROSPECTIVE JUROR: No.

23 MR. W. BAILEY: And, Ms. Green, Ms. Jacqueline  
24 Green; right? Did I get that correct?

25 PROSPECTIVE JUROR: Yes, sir.

1 MR. W. BAILEY: You're in customer service at IRS?

2 PROSPECTIVE JUROR: Yes, sir.

3 MR. W. BAILEY: You calm people down when they  
4 come in mad?

5 PROSPECTIVE JUROR: No, they call me.

6 MR. W. BAILEY: And how long have you been at IRS?

7 PROSPECTIVE JUROR: 15 years.

8 MR. W. BAILEY: Is there a Mr. Green?

9 PROSPECTIVE JUROR: Separated, long time.

10 MR. W. BAILEY: Do you have children?

11 PROSPECTIVE JUROR: Two.

12 MR. W. BAILEY: Ages?

13 PROSPECTIVE JUROR: 20 and 15.

14 MR. W. BAILEY: Enjoy your work?

15 PROSPECTIVE JUROR: Yes, sir.

16 MR. W. BAILEY: You're not going to hold that  
17 against us because we're going to hold you a week, are you?

18 PROSPECTIVE JUROR: No, I'm glad, the calls we  
19 get.

20 MR. W. BAILEY: Mr. Yeager, how are you doing?

21 PROSPECTIVE JUROR: Doing fine.

22 MR. W. BAILEY: Is there a Mrs. Yeager?

23 PROSPECTIVE JUROR: Yes, there is.

24 MR. W. BAILEY: What does she do, sir?

25 PROSPECTIVE JUROR: Right now she's currently

1 unemployed.

2 MR. W. BAILEY: And you work as a control room  
3 operator. Where? I didn't get that.

4 PROSPECTIVE JUROR: Fleischmann's Yeast.

5 MR. W. BAILEY: Tell us a little something about  
6 your company.

7 PROSPECTIVE JUROR: Company sells yeast to  
8 bakeries such as Wonder, pizza companies, different  
9 organizations like that.

10 MR. W. BAILEY: And do you have children?

11 PROSPECTIVE JUROR: Yes, sir, I have two sons, 27  
12 and 21.

13 MR. W. BAILEY: Mr. McCollum, did I get that  
14 correct?

15 PROSPECTIVE JUROR: Yes.

16 MR. W. BAILEY: You're retired from MLGW.

17 PROSPECTIVE JUROR: That's right.

18 MR. W. BAILEY: How long have you been retired,  
19 sir?

20 PROSPECTIVE JUROR: First day of April.

21 MR. W. BAILEY: Enjoying your retirement?

22 PROSPECTIVE JUROR: Somewhat.

23 MR. W. BAILEY: How long did you work at MLGW?

24 PROSPECTIVE JUROR: 21 years.

25 MR. W. BAILEY: What did you do while you were

1       there?

2                   PROSPECTIVE JUROR:   Worked in the body shop.

3                   MR. W. BAILEY:   Do you have children?

4                   PROSPECTIVE JUROR:   Yes, I do.

5                   MR. W. BAILEY:   Thank you, sir.   Ms. Brock, back  
6       to you, ma'am.   You're in the jewelry business?

7                   PROSPECTIVE JUROR:   I was, yes, with -- I did it  
8       for 13 years.

9                   MR. W. BAILEY:   And you managed your own jewelry  
10      store?

11                  PROSPECTIVE JUROR:   No, no, no, sir.   I did it  
12      with three friends and we traveled with it.   It was handmade  
13      jewelry that we traveled to shows all over the country.

14                  MR. W. BAILEY:   Okay.   Very interesting.   And is  
15      there a Mr. Brock?

16                  PROSPECTIVE JUROR:   I'm divorced.

17                  MR. W. BAILEY:   And of course you can call a ball  
18      a ball and a strike a strike?

19                  PROSPECTIVE JUROR:   I feel I can, yes.   I must say  
20      I am an emotional person, yes.   I do -- I do have empathy.

21                  MR. W. BAILEY:   But you understand that of course  
22      His Honor is going to tell you that all of that must be set  
23      aside.

24                  PROSPECTIVE JUROR:   Yes, sir.

25                  MR. W. BAILEY:   And you're going to have to weigh

1 the evidence and you are the sole judges of the facts and that  
2 being the judges of the fact, that you've got to go in there  
3 and just call it as you see it.

4 PROSPECTIVE JUROR: (Nodded head up and down.)

5 MR. W. BAILEY: Thank you, ma'am. Ms. Jordan --  
6 see, I got mixed up. I'm sorry. Tell us a little something  
7 about yourself. Is there a Mr. Jordan?

8 PROSPECTIVE JUROR: Yes.

9 MR. W. BAILEY: And you have children?

10 PROSPECTIVE JUROR: Three grown. Lots of  
11 grandchildren.

12 MR. W. BAILEY: And you have your own commercial  
13 cleaning service?

14 PROSPECTIVE JUROR: We do.

15 MR. W. BAILEY: You and your husband?

16 PROSPECTIVE JUROR: My husband.

17 MR. W. BAILEY: You have children?

18 PROSPECTIVE JUROR: We have three children.

19 MR. W. BAILEY: I'm sorry. You say they're grown?

20 PROSPECTIVE JUROR: Yes.

21 MR. W. BAILEY: Okay. Anything about this case  
22 that would cause you not to be able to call a ball a ball or a  
23 strike a strike?

24 PROSPECTIVE JUROR: No, I can do that.

25 MR. W. BAILEY: Now, you know, when we talk about



1 sympathy and emotional responses, there is a -- on a serious  
2 note, very serious note, of course we're talking about a  
3 death. And is there anybody among you who thinks that because  
4 there is a death, because a person did die, that that would  
5 cause you not to be able to be fair and impartial?

6 Ms. Ross, how about you, ma'am?

7 PROSPECTIVE JUROR: Moss.

8 MR. W. BAILEY: Moss, I'm sorry. I can't read my  
9 -- the fact that there's a death involved, which is the crux  
10 of this case, that this case evolves around a young lady  
11 Mr. Braswell's wife being found dead, is that in and of itself  
12 something to cause you not to be fair and impartial?

13 PROSPECTIVE JUROR: No.

14 MR. W. BAILEY: Is there a Mr. Moss?

15 PROSPECTIVE JUROR: No.

16 MR. W. BAILEY: And you're employed where, ma'am?

17 PROSPECTIVE JUROR: Brother Industries.

18 MR. W. BAILEY: Is that office hardware?

19 PROSPECTIVE JUROR: It's a factory.

20 MR. W. BAILEY: How long have you been there?

21 PROSPECTIVE JUROR: 15 years.

22 MR. W. BAILEY: Enjoy your work?

23 PROSPECTIVE JUROR: Love it.

24 MR. W. BAILEY: Mr. Guerrero, did I pronounce that  
25 correctly?

1 PROSPECTIVE JUROR: Yes, sir.

2 MR. W. BAILEY: You're at Walgreens?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. W. BAILEY: And you've been there how long,  
5 sir?

6 PROSPECTIVE JUROR: Four years.

7 MR. W. BAILEY: Tell us a little something about  
8 what you do there.

9 PROSPECTIVE JUROR: I guess you could say I do  
10 some of everything. Even though I'm assistant manager, I do  
11 everything from assisting the pharmacy to dealing with  
12 customer relations, making sure all the customer's needs are  
13 done, making sure the shelves are properly stocked and making  
14 sure all the other employees are working and constantly busy.

15 MR. W. BAILEY: Which one?

16 PROSPECTIVE JUROR: It's the one on Third and  
17 Raines.

18 MR. W. BAILEY: I see. Ms. Jenkins, how about  
19 you, ma'am? Is there a Mr. Jenkins?

20 PROSPECTIVE JUROR: I'm a widow -- I mean,  
21 divorced.

22 MR. W. BAILEY: And you have children?

23 PROSPECTIVE JUROR: Four, they're all grown. I  
24 have three grandchildren.

25 MR. W. BAILEY: Congratulations.

1 PROSPECTIVE JUROR: Thank you.

2 MR. W. BAILEY: And you've been at Regions 18  
3 years?

4 PROSPECTIVE JUROR: Formerly Union Planters 18  
5 years, yes.

6 MR. W. BAILEY: Mr. Guerrero, is there a  
7 Ms. Guerrero?

8 PROSPECTIVE JUROR: No, sir.

9 MR. W. BAILEY: Now let's talk about some of the  
10 things that will occur in this case that you're going to be  
11 listening to. And stop me at any given point and let me know  
12 your feelings. As we have talked about, that the prosecutor  
13 mentioned earlier, this case involves the charge of murder in  
14 the first degree and Mr. Vern Braswell is charged with killing  
15 his wife. Now, do any of you know Mr. Braswell, ever read  
16 anything about this case, saw anything in the papers or on  
17 television about it?

18 And if you -- let me also ask, Mr. Braswell is a  
19 graduate of Memphis State University where he got his --

20 MS. WEIRICH: May we approach, Judge?

21 THE COURT: You may.

22 (Bench conference commenced.)

23 MS. WEIRICH: I'm going to object to this line of  
24 statement unless they're certain the defendant is going to  
25 testify.

1 THE COURT: They've all indicated that they don't  
2 know him so I don't see any relevance to giving a bio of your  
3 client. He can do that himself when he testifies.

4 MR. W. BAILEY: Very well.

5 (Said bench conference concluded.)

6 MR. W. BAILEY: Did any of you do -- do any of you  
7 happen to have any familiarity or know anything about  
8 Ms. Braswell? She was involved in occupational therapy.

9 PROSPECTIVE JUROR: I do.

10 MR. W. BAILEY: You do?

11 MR. J. BAILEY: May we approach on that, Judge?

12 THE COURT: You may. Ms. Chiodo, would you step  
13 up here, please?

14 (Bench conference commenced.)

15 THE COURT: Did you know Ms. Braswell?

16 PROSPECTIVE JUROR: I didn't know her, but she was  
17 my best friend's mother's nurse who came by the house to take  
18 care of her.

19 THE COURT: Okay. And did you meet her personally  
20 or you just heard your best friend talk about her or how do  
21 you know?

22 PROSPECTIVE JUROR: Well, the name kept sounding  
23 familiar to me and when you said what she did for a living, I  
24 realized who it was.

25 THE COURT: Okay. Did your friend talk about her?

1 I mean, how would you know who your best friend's mother's  
2 occupational therapist was if you weren't there? Would she  
3 talk about her?

4 PROSPECTIVE JUROR: No, she just mentioned about  
5 what had happened to her.

6 THE COURT: Okay. After it happened your friend  
7 mentioned to you about it?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: Okay.

10 MS. WEIRICH: Can we inquire what her friend's  
11 name was?

12 PROSPECTIVE JUROR: Pat Williams. Her mother's  
13 name is Brenda.

14 THE COURT: Okay. I think I'll excuse you then,  
15 Ms. Chiodo. Thank you very much for bringing that to our  
16 attention. Please return to the jury room across the street.

17 (Said bench conference concluded.)

18 MR. W. BAILEY: One of the things I wanted to  
19 mention to you is that -- I want to ask first, how many of you  
20 have had previous jury experience? Three of you, I see. And  
21 were they civil or -- let's start with you Mr. McCollum.

22 PROSPECTIVE JUROR: Same type case. It wasn't  
23 murder. It was attempted murder case.

24 MR. W. BAILEY: Did you sit through the trial?

25 PROSPECTIVE JUROR: Yes, I did.

1 MR. W. BAILEY: Did you render a verdict with the  
2 jury?

3 PROSPECTIVE JUROR: Yes, we did.

4 MR. W. BAILEY: All right. And, Ms. Green, I  
5 believe you had your hand up?

6 PROSPECTIVE JUROR: Yes, sir, but I didn't sit  
7 through the whole trial.

8 MR. W. BAILEY: Was it a civil or criminal  
9 proceeding?

10 PROSPECTIVE JUROR: Criminal.

11 PROSPECTIVE JUROR: I was on federal jury duty but  
12 that's all. I didn't sit on a trial the whole month.

13 MR. W. BAILEY: You didn't get called?

14 PROSPECTIVE JUROR: No. I was called in later and  
15 put on grand jury for two years, but they had to switch me  
16 around to an alternate so I never did serve as far as a jury  
17 is concerned, sitting like this.

18 MR. W. BAILEY: Ms. Brooks, I believe I saw your  
19 hand.

20 PROSPECTIVE JUROR: I was on grand jury for I  
21 think at the time six months on Tuesdays and Thursdays when it  
22 was Tuesdays and Thursdays.

23 MR. W. BAILEY: How long ago was it?

24 PROSPECTIVE JUROR: Now I think it was in the last  
25 ten years but since y'all called me again I don't know. I

1 can't be for certain.

2 MR. W. BAILEY: Well, I'm glad you mentioned the  
3 -- both of you mentioned the grand jury service because you  
4 know the grand jury service is unilateral. It's just the  
5 prosecution that puts forth the proof and not the defendant.  
6 And that the -- and I'm saying this for the benefit of you  
7 other grand jurors.

8 You understand that the fact that Mr. Braswell has been  
9 indicted and charged with first degree murder only means that  
10 the grand jury said that there's enough proof here, enough  
11 information here, I should say, not proof but information for  
12 you, Mr. Braswell, to come down and face 12 people of your  
13 peers and let them hear -- let's air out the accusations. You  
14 understand that that's just a method by which -- it's a tool.  
15 That's all the indictment is. It's a tool, a paper tool just  
16 like a summons in a civil case.

17 How many of you have you been -- received a summons in  
18 a civil case or a citation or traffic offense? That's all it  
19 is for a document to be issued to say come to court, Mr.  
20 Braswell, and stand trial. That's all that means. It doesn't  
21 mean that he's guilty or innocent.

22 Now how many of you can give him the presumption of  
23 being innocent? That presumption stays with him now. As he  
24 sits over here, Mr. Braswell is presumed to be innocent.  
25 That's one of the most sacred presumptions in the law, the

1 presumption of innocence. And he's entitled to that  
2 presumption. Now can y'all -- yes, ma'am?

3 PROSPECTIVE JUROR: I was called on jury duty  
4 about ten or 15 years ago but I never did serve.

5 MR. W. BAILEY: Can you give Mr. Braswell the  
6 benefit of the presumption of innocence?

7 PROSPECTIVE JUROR: Well, everyone is assumed  
8 innocent until proven guilty.

9 MR. W. BAILEY: Very well. That's what we want.  
10 The rest of you can do that? You won't take the fact that  
11 he's sitting over here behind his lawyers charged with this  
12 offense as meaning anything?

13 Now let's talk about that presumption. In order for  
14 the presumption and that presumption stays with him throughout  
15 this trial until or unless it's overcome by competent and  
16 convincing evidence, that is by proof beyond a reasonable  
17 doubt. And we're going to talk about that.

18 But before we get to that, let's talk about burden of  
19 proof because in order for him to be deprived of that  
20 presumption of innocence, the burden of proof is on the  
21 prosecution. He's not required to prove anything. He's not  
22 required to take the stand. He's not required to put on any  
23 proof on his behalf. He's not required to do anything. But  
24 he's required to come to court because once you're indicted,  
25 you've got to show up and stand trial. But that burden of



1 proof is on the prosecution.

2 Now can all of you require the prosecution in order to  
3 obtain a conviction to prove guilt beyond a reasonable doubt  
4 that they've got to discharge that burden? Can all of you do  
5 that? All of you?

6 Now let's talk about proof beyond a reasonable doubt.  
7 And I like to -- let me first share with you there are two  
8 types of proof, two types of evidence. One is direct evidence  
9 and the other is circumstantial evidence. Now let me -- and  
10 this is very important.

11 Direct evidence, of course, is where if somebody --  
12 I've got my glasses here and somebody comes along and removes  
13 them and someone witnesses, any of you witness that my glasses  
14 were taken and saw who did it, then that's direct proof. You  
15 were an eyewitness. You saw the glasses taken.

16 But now if the glasses are here and I come back in the  
17 room and they're gone and you say well, we don't know who took  
18 them but I saw somebody else with glasses that looked like  
19 yours going out the door, well that can be circumstantial  
20 evidence, the timing and the characteristics of the glasses  
21 that you saw but you still are not prepared to swear that  
22 those were my glasses that you saw him with.

23 But the point is that direct is something that you  
24 eyewitness and circumstantial is something that's like a  
25 chain. And I like to refer -- I wear a bracelet for the

1 purpose of illustrating to you that this bracelet is a  
2 bracelet because all of the chains connect. And if the chains  
3 don't connect, then we don't have a bracelet. We've got a  
4 piece of jewelry but we don't have a bracelet. And that's  
5 what circumstantial evidence is.

6 All of the chain of evidence in a circumstantial  
7 evidence -- case have got to connect. They've got to hold  
8 together. That's what a circumstantial evidence case is.  
9 It's not based on conjecture, suspicion or gut instinct.

10 And let's talk about that for a minute, if you will. A  
11 case is not tried -- it's not your duty to use your gut  
12 instinct or your suspicion. And I like to use illustration of  
13 -- an example. You watch a person who gets -- who is led out  
14 of, let's say Walgreens department store, Mr. Guerrero, and  
15 you see a police officer putting him in the car. And  
16 instinctively and we say he must have stolen something or they  
17 wouldn't be putting him in the car. But oftentimes -- and we  
18 just instinctively do that. We're human. But oftentimes that  
19 person is released. It wasn't a theft or he didn't do it.  
20 But we had a suspicion that he did because we saw him  
21 arrested.

22 Now can all of you promise that you won't judge this  
23 case based on suspicion? Can all of you promise us that  
24 you'll say to yourself, well, you know, something is not right  
25 or I don't like the way this case stacks up but yet, I'm not

1 satisfied. I don't think they've proved this case beyond a  
2 reasonable doubt and you scratch your head and say I don't  
3 think they've gotten there yet. Would you have any problem at  
4 that point after all the proof is in and you're not satisfied  
5 that the burden has been discharged regarding that proof  
6 beyond a reasonable doubt, are all of you satisfied that you  
7 could come back with a verdict of not guilty? You, ma'am?  
8 You? You, sir? Rest of you? All of you can do that and feel  
9 comfortable and feel good about yourself?

10 Would any of you have a problem in a murder case  
11 saying, you know, I tried the murder case of Vern Braswell and  
12 I thought he may have been guilty but I wasn't sure. They  
13 didn't prove it. Would any of you have any proof -- any  
14 problem going back home to your personal environments among  
15 your relatives and friends and saying that I sat in that case  
16 and they didn't -- the proof didn't stack up beyond a  
17 reasonable doubt and returned a verdict of not guilty? Any of  
18 you got any problem with that?

19 PROSPECTIVE JUROR: If the proof is not there.

20 MR. W. BAILEY: Now one of the things about this  
21 case is going to involve -- we anticipate the proof is going  
22 to center around exotic sexual experiences that the Braswells  
23 practiced. And you're going to see sex toys, sexual items.  
24 And you're going to hear about sexual devices. And you're  
25 going to hear a term called "erotic asphyxiation" and "erotic

1 asphyxiafilia." Now those terms have to do with the  
2 constraint of oxygen going to the brain.

3 Now is there anybody among you who feel that you  
4 couldn't -- that this is not the type case for you? If it's  
5 not, I want to point out quickly, it's not to pass judgment on  
6 anybody's sexual activity or sex life. That's not what we're  
7 here for. We're not here to do that. We're not here to  
8 condemn nor condone anybody regarding their sexual practices.

9 But we anticipate that this is the kind of proof that's  
10 going to come in involving the sexual practices of these two  
11 married people. And you're going to hear about those sort of  
12 sexual practices. You're going to hear it's going to open up  
13 what they did sexually, how they sought sexual gratification.

14 And that's why I say that -- why I mention on the front  
15 end that this is going to be a fairly rough ride. Now is  
16 there anybody among you who feel that you can't sit and listen  
17 fairly and hear the proof? And is there anyone who feels that  
18 if you don't like the sexual practices in and of themselves  
19 but those sexual practices don't amount up to a premeditated  
20 and intentional killing that you couldn't stick by your --  
21 that you wouldn't have any -- that you have any hesitancy  
22 about acquitting this young man? Any of you feel that way?

23 You're going to hear from a psychologist who  
24 specializes in the field of deviant sexual behavior, written  
25 many books. Anybody feel that -- His Honor is going to tell

1     you how to evaluate the testimony of expert witnesses. So I  
2     won't go into that, but His Honor will instruct you on how to  
3     accept and evaluate testimony of expert witnesses. One of the  
4     things he'll tell you, I must share with you, is that you  
5     don't have to accept the testimony of expert witnesses.  
6     You're not bound by it, but he's here to guide you or she's  
7     here to guide you.

8             Now is there anybody who feels that you couldn't accept  
9     the testimony of expert witness and follow the guidelines that  
10    His Honor will give you in terms of how you accept expert  
11    testimony?

12            Now you're going to see photographs and you're going to  
13    see photographs of the decedent and they're never pleasant to  
14    look at. But is there anybody who feels that you would get so  
15    emotionally inflamed or carried away by virtue of looking at  
16    autopsy photographs from our fine forensic center that you  
17    couldn't maintain your fair judgment and call a ball a ball  
18    and a strike a strike? Anybody feel that you couldn't do  
19    that, that you'd get emotionally or passionately carried away  
20    one way or the other? I take it all of you could sit there  
21    and -- yes, ma'am?

22            PROSPECTIVE JUROR: I don't know if I can  
23    emotionally -- something like that is awfully hard to ever  
24    erase out of my head. That's why I cannot go see horrible  
25    movies or anything because if it's very gory, I don't think I

1       could deal with it. I don't know. I don't know because I  
2       haven't seen the pictures but no.

3               MR. W. BAILEY: Well, the point is when it's all  
4       said and done of course what we're getting at is after those  
5       pictures leave your view, can you sit there and give  
6       Mr. Braswell the benefit of your fair judgment?

7               PROSPECTIVE JUROR: I can do that.

8               MR. W. BAILEY: And be a fair and impartial jury  
9       -- juror?

10              PROSPECTIVE JUROR: Oh, I could do that. But I  
11       don't know if I -- to erase the pictures, that would be a  
12       problem to me in my own personal -- no, I could -- no, that  
13       would not make me feel any different against him, no.

14              MR. W. BAILEY: I see. You wouldn't penalize him  
15       for it?

16              PROSPECTIVE JUROR: No, sir. No, sir.

17              MR. W. BAILEY: You wouldn't say how awful those  
18       photographs were --

19              PROSPECTIVE JUROR: No, sir.

20              MR. W. BAILEY: -- and I'm going to have to --

21              PROSPECTIVE JUROR: No, sir.

22              MR. W. BAILEY: -- punish you or punish somebody?

23              PROSPECTIVE JUROR: No, sir.

24              MR. W. BAILEY: All right. And all of you as well  
25       understand that it's not your job here to solve a homicide

1 puzzle in terms of -- but it's your job to simply look at the  
2 situation and determine whether there's proof beyond a  
3 reasonable doubt to show that Mr. Braswell intentionally and  
4 deliberately and with premeditation killed his wife?

5 THE COURT: Mr. Bailey, Ms. Lowery has her hand  
6 raised.

7 PROSPECTIVE JUROR: I am emotionally enraged at  
8 this moment, and I'm sorry but I can't sit here and listen  
9 just to this and not get upset. It makes me mad and that may  
10 be just normal, but I'm already looking at him thinking he's  
11 done something. And that's -- I'm sorry, but that's how I  
12 feel.

13 THE COURT: Well, you do understand that in our  
14 system of justice, people are presumed innocent?

15 PROSPECTIVE JUROR: Yes, sir, I do.

16 THE COURT: And the burden is on the State to  
17 bring forth proof. And if they fail in that responsibility,  
18 then an individual is found not guilty. That's the way the  
19 system works.

20 PROSPECTIVE JUROR: I understand. I understand  
21 that. But I just find myself emotionally enraged at this  
22 moment. I'm sorry.

23 THE COURT: No, I appreciate your calling that to  
24 our attention and I understand and I think Ms. Brock was  
25 alluding to something similar to that, that is an emotional --

1 and Mr. Bailey is apprising you of the fact that this will be  
2 -- could be an emotional trial for some jurors and he wants  
3 people to know on the front end. And if you feel that because  
4 of the subject matter it would be too emotional for you to  
5 keep a clear head and render sound judgment, then perhaps you  
6 should be excused.

7 PROSPECTIVE JUROR: I just feel like out of  
8 respect that I should say that.

9 THE COURT: And I appreciate that. But of course  
10 at this point, you don't know whether Mr. Braswell has  
11 committed any crime or not. You presume him to be innocent at  
12 this point. In spite of what other emotional feelings you  
13 have, the law requires that you presume him to be innocent.  
14 But are you telling me, Ms. Lowery, that you might find that  
15 difficult to do given the charges?

16 PROSPECTIVE JUROR: I find it difficult to do  
17 right now. I'm sorry.

18 THE COURT: Thank you for calling that to our  
19 attention and I'll excuse you at this time.

20 PROSPECTIVE JUROR: Thank you.

21 THE COURT: All right. Mr. Bailey.

22 MR. W. BAILEY: Thank you, Your Honor. Is there  
23 anyone else who has any sort of reaction? As we said, it's  
24 going to be a rough ride.

25 Now is there anyone who feels that because of your



1 religious beliefs and if you -- that you couldn't -- that you  
2 would hold against the Braswells, Mr. and Mrs. Braswell, any  
3 deviant sexual behavior and penalize them for being off into  
4 any deviant sexual behavior and not be able to call a ball a  
5 ball and a strike a strike and evaluate the case solely on  
6 that?

7 Any of you would feel that your lifestyle may be so  
8 different from his that you would want to penalize him for  
9 whatever he was off into, he and his wife? Any of you feel  
10 that way? You wouldn't -- you could give him the benefit of  
11 your fair judgment? Because again, we're not here to morally  
12 pass judgment on lifestyles. That ain't why we're here today.  
13 That's not our objective. And being a juror is one of the  
14 highest callings, as you know, that one can render in his  
15 country or her country.

16 Now I make a few notes and we anticipate sex toys are  
17 going to come into play and be introduced into evidence and  
18 devices, sex devices you'll be looking at. Would any of that  
19 cause you to be embarrassed or uneasy to such an extent that  
20 you couldn't be a fair and impartial juror? I mean, it's not  
21 -- let me put it to you this way. It's not embarrassing to be  
22 embarrassed. But we just don't -- we want you to be able to  
23 sit there after your embarrassment if you are embarrassed and  
24 not hold that against Mr. Braswell because this is a murder  
25 trial.

1           Now the other thing is His Honor, we anticipate and  
2 I've been around a long time trying cases, and judges always  
3 charge minority verdict. And what that means is it means that  
4 if the majority of the jurors were one persuasion or one  
5 opinion but you weren't convinced after holding yourself open  
6 to be convinced and persuaded by the other jurors, you  
7 wouldn't look at the other jurors and say well y'all so vastly  
8 outnumber me as 11 to one, or whatever it is or five to seven,  
9 you wouldn't say I'm going to throw in the towel because all  
10 of y'all must be right and I'm wrong. You wouldn't let that  
11 -- the fact that other jurors got one opinion and you might  
12 singularly be of an opinion.

13           But now you've got to hold yourself open to be  
14 convinced and persuaded. That doesn't mean you can go in with  
15 a closed mind and say I don't want to listen to anything  
16 you've got to say because that's why we have 12 collective  
17 people who sit back there and sort through and in the end  
18 usually works out. But if you can't in good conscience come  
19 to the conclusion with the other jurors, would any of you have  
20 any problem in sticking by your own opinion? I mean, we don't  
21 want other jurors who would go along just to get along.  
22 That's not what this system is about.

23           All right. Now one other thing and I touched on civil  
24 jury experience and criminal jury experience. And I do want  
25 to show the difference in the civil trial -- and I try both

1 civil and criminal cases. And on the civil side, I tell  
2 jurors that the burden of proof is by the plaintiff. That is  
3 if you get in an accident or something and you sue somebody,  
4 then you've got the burden of proof by what is known as the  
5 preponderance of the greater weight. And I think I saw a hand  
6 or two who had been involved in a civil trial.

7 But now preponderance of greater weight is entirely  
8 different from proof beyond a reasonable doubt in a criminal  
9 case. In other words, the proof in a criminal case is much --  
10 there's a much greater demand in a criminal prosecution that  
11 these prosecutors have in terms of their burden than that of a  
12 plaintiff lawyer in a civil case. He doesn't have that big  
13 burden that the prosecution has in the civil courts over  
14 there, that the prosecutors over here have in Criminal Court.

15 And I want to make that distinction because oftentimes  
16 people -- unless you call it to their attention, they don't  
17 realize that there's a markable -- remarkable difference  
18 between the proof of the greater weight and preponderance of  
19 the evidence as opposed to proof beyond a reasonable doubt.  
20 There are two different standards in terms of proof demands.

21 If we -- we anticipate we're going to call an expert  
22 from St. Louis, Missouri, an expert in the sexual field. Now  
23 the fact that he's coming from St. Louis, would any of you  
24 hold that against him or would you look upon him as you would  
25 as if he were here in our own backyard?

1 I take it that wouldn't make any difference, that you  
2 would listen and evaluate his testimony solely by what  
3 Judge Dailey tells you. Is that a fair assessment?

4 Would Your Honor indulge me?

5 THE COURT: Let's see. Ms. Jenkins and  
6 Mr. Guerrero and Ms. Jordan, if y'all will take the three  
7 seats on the back row, please, back there. And, Ms. Moss, if  
8 you would have a seat in the middle row, please.

9 MR. W. BAILEY: May I, Your Honor?

10 THE COURT: Sure.

11 MR. W. BAILEY: One of the things I neglected to  
12 ask you is that you're going to hear from Mr. Braswell. And  
13 he's not required to take the stand, nor are we required to  
14 announce or tell you that he's going to take the stand. But  
15 if you do hear from him, and we anticipate you will, can you  
16 evaluate and judge his testimony by the same ground rules that  
17 you can evaluate and judge the testimony of other witnesses?

18 And His Honor is going to tell you how to do that. His  
19 Honor will charge you with the law on how to evaluate the  
20 testimony of witnesses. And when he takes that stand, he's a  
21 witness. And of course you would use all of the equipment and  
22 skills at your command. And one of the things you have to use  
23 in these cases, I don't care what kind of case it is, whether  
24 it's a shoplifting or a first degree murder or whether it's a  
25 rear-ender in a civil case, one of the things that you always

1 employ and that is your common senses.

2 And I am saying that to say that that's why we get --  
3 otherwise, we would have jurors of nothing but professionals  
4 if we didn't want people using their common senses. We want  
5 people to use their common senses. You don't leave those  
6 outside the building just because you walk in here and become  
7 jurors. You bring into this courtroom your common senses.  
8 And whatever your common senses tell you in terms of how to  
9 evaluate things and how to look at things based on your own  
10 life experiences, that's what you bring with you. That's the  
11 value. That's the beauty of a jury of your peers. That's the  
12 beauty.

13 Now will all of you use your common senses and look at  
14 the testimony and follow the guidelines given to you by the  
15 Court, by Judge Dailey, in terms of evaluating the testimony  
16 of Mr. Braswell? All of you can do that?

17 Would Your Honor indulge? Thank you, Your Honor.

18 MR. J. BAILEY: Your Honor, may we approach? I  
19 just have a procedural question.

20 THE COURT: All right.

21 (Bench conference commenced.)

22 MR. J. BAILEY: Are our strikes exercised only on  
23 the 12 in the box or do we strike from the floor also?

24 THE COURT: 12 in the box.

25 MR. W. BAILEY: That means -- that means if we are

1 not -- that once we pass the jurors we can always come back?

2 THE COURT: Yes.

3 (Said bench conference concluded.)

4 THE COURT: Would y'all approach the bench,  
5 please?

6 (Bench conference commenced.)

7 THE COURT: Ms. Bryson has already been excused.  
8 Did you mean the person who took her place?

9 MR. J. BAILEY: I'm sorry. I apologize.

10 THE COURT: That would be Jordan; is that correct?

11 MR. J. BAILEY: That's correct.

12 (Said bench conference concluded.)

13 MR. J. BAILEY: Your Honor, excuse us. Let us  
14 approach again.

15 THE COURT: Okay.

16 (Bench conference commenced.)

17 MR. W. BAILEY: It's Ms. Margaret Bryan (sic), the  
18 -- from right to left, the second lady at the top, the second  
19 person.

20 THE COURT: Ms. Bryson has been excused.

21 Ms. Jordan is in that spot now.

22 MR. W. BAILEY: Ms. Jordan. That's who it is.

23 (Said bench conference concluded.)

24 THE COURT: All right. Ms. Brock, Ms. Jordan,  
25 Mr. Mitchell, Ms. Hill and Mr. Yeager, y'all are all excused

1 at this time. Thank you for your participation. Please check  
2 back across the street.

3 Ms. Sparks, if you would have a seat on the back row  
4 next to Mr. Berry, please. And I think we'll take a  
5 ten-minute break at this time. Those of you who are in the  
6 audience, please wait right outside the courtroom. And as  
7 always, do not discuss the case in any way among yourselves  
8 during the break. Those of you up front will go with Officer  
9 Lafferty. As always, do not discuss the case.

10 (Prospective jurors out.)

11 MS. WEIRICH: May we approach, Judge?

12 THE COURT: You may. Take him out, please.

13 (Bench conference commenced.)

14 MS. WEIRICH: I'd like to raise a Batson challenge  
15 at this point for the record, considering there were four  
16 whites struck at one time.

17 THE COURT: Okay. Well, it's -- there are eight  
18 total challenges and so only four have been exercised so at  
19 this point, I don't think we've crossed that threshold that  
20 would necessitate a race-neutral reason being articulated, but  
21 I'll note your exception.

22 (Said bench conference concluded.)

23 THE COURT: We are going to just take a brief  
24 recess so if you would, make sure you don't go too far from  
25 the courtroom. Stand in recess.

1 (Recess.)

2 THE COURT: Bring out the defendant, please. Ask  
3 the jurors to step in, please. Bring in the jury.

4 (Prospective jurors present.)

5 THE COURT: All right. You may call eight more  
6 jurors, please.

7 DEPUTY LAFFERTY: 20.

8 THE COURT: Brian Oliver. Actually, we need ten  
9 more.

10 DEPUTY LAFFERTY: 58.

11 THE COURT: Clarence Owens.

12 DEPUTY LAFFERTY: 50.

13 THE COURT: Gloria Bolton.

14 DEPUTY LAFFERTY: 46.

15 THE COURT: Deborah Easley.

16 DEPUTY LAFFERTY: 54.

17 THE COURT: Mark Widner.

18 DEPUTY LAFFERTY: Nine.

19 THE COURT: Sandra Clay.

20 DEPUTY LAFFERTY: 42.

21 THE COURT: Lee Jordan.

22 DEPUTY LAFFERTY: 57.

23 THE COURT: Evelyn Benton.

24 DEPUTY LAFFERTY: 22.

25 THE COURT: Thomas Nagel.



1 DEPUTY LAFFERTY: 38.

2 THE COURT: Verna Jackson.

3 Mr. Oliver, are you employed?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Where?

6 PROSPECTIVE JUROR: I work for a company called  
7 Tubelite. It's a sign, silk screen digital company.

8 THE COURT: What kind of company?

9 PROSPECTIVE JUROR: Sign, silk screen and digital  
10 company.

11 THE COURT: How long have you been with them?

12 PROSPECTIVE JUROR: Ten years.

13 THE COURT: What do you do for them?

14 PROSPECTIVE JUROR: Customer service.

15 THE COURT: And could you stay with us for several  
16 days on a sequestered jury starting tomorrow?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you, sir. Mr. Owens, are you  
19 employed?

20 PROSPECTIVE JUROR: Retired, sir.

21 THE COURT: From where?

22 PROSPECTIVE JUROR: U.S. Postal Service.

23 THE COURT: Okay. Could you stay with us for a  
24 few days on a sequestered jury?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Thank you, sir. Ms. Bolton, are you  
2 employed?

3 PROSPECTIVE JUROR: Retired.

4 THE COURT: From where?

5 PROSPECTIVE JUROR: Shelby County Schools.

6 THE COURT: Okay. And could you stay with us for  
7 a few days on a sequestered jury?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you. Ms. Easley, are you  
10 employed?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Where?

13 PROSPECTIVE JUROR: Continental Cleaners.

14 THE COURT: How long have you been there?

15 PROSPECTIVE JUROR: Seven years.

16 THE COURT: Could you stay with us for a few days  
17 on a sequestered jury?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Thank you. Mr. Widner, are you  
20 employed, sir?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: By whom?

23 PROSPECTIVE JUROR: Federal Express.

24 THE COURT: How long have you been with them?

25 PROSPECTIVE JUROR: Nine years.

1 THE COURT: What do you do for them?

2 PROSPECTIVE JUROR: I'm a programmer.

3 THE COURT: Could you stay with us for a few days  
4 on a sequestered jury?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Thank you. Ms. Clay, are you  
7 employed?

8 PROSPECTIVE JUROR: No, I'm unemployed.

9 THE COURT: Could you stay with us for a few days  
10 on a sequestered jury?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you. Mr. Jordan, are you  
13 employed, sir?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Where?

16 PROSPECTIVE JUROR: River City Contractors.

17 THE COURT: How long have you been with them?

18 PROSPECTIVE JUROR: 23 years.

19 THE COURT: Okay. Could you stay with us for a  
20 few days on a sequestered jury?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you, sir. Ms. Benton, are you  
23 employed?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Could you stay with on a sequestered

1 jury?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you. Mr. Nagel, are you  
4 employed?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: By whom?

7 PROSPECTIVE JUROR: First Tennessee.

8 THE COURT: How long have you been with them?

9 PROSPECTIVE JUROR: 14 years.

10 THE COURT: What do you do for them?

11 PROSPECTIVE JUROR: Commercial loan review.

12 THE COURT: Could you stay with us for a few days  
13 on a sequestered jury?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Thank you. Ms. Jackson, are you  
16 employed?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Where?

19 PROSPECTIVE JUROR: Holiday Inn and Fed Ex.

20 THE COURT: And could you stay with us on a  
21 sequestered jury?

22 PROSPECTIVE JUROR: Yes, I could.

23 THE COURT: Thank you, ma'am. Ms. Carnesale.

24 MS. CARNESALE: Good afternoon. As Judge Dailey  
25 told you my name is Betsy Carnesale. And along with Amy

1 Weirich, we represent the State of Tennessee in this matter  
2 and we are bringing the prosecution against Mr. Vern Braswell  
3 the defendant in this case.

4 For all of you newcomers, I think there are several of  
5 you, were you able to hear the voir dire or the jury selection  
6 questions that we went through earlier this afternoon? I'm  
7 not going to take as long as we did the first time because I  
8 imagine most of you were able to hear and understand what  
9 we're asking.

10 Before I get started on some individual questions, is  
11 there any reason that any of you newcomers to the panel know  
12 that you would be unable to be fair and impartial in this  
13 matter? For example, we heard some of the prior people  
14 sitting up in the box based on things that had happened to  
15 them in their past, they felt they would not be able to be  
16 fair and impartial for this particular case.

17 And, Ms. Benton, you're shaking your head. Are you  
18 agreeing that you heard that or is there something you would  
19 like to say?

20 PROSPECTIVE JUROR: I would like to say this if I  
21 could, please. My daughter was killed in 2003 in an  
22 automobile accident, and I'm emotional over that and I don't  
23 know if it would have anything to do with this particular case  
24 or not.

25 MS. CARNESALE: And I'm so sorry that happened to

1 you. This is a homicide case where Mr. Braswell has been  
2 indicted for first degree murder for killing his wife Sheila  
3 Braswell. I don't know if your daughter died in an automobile  
4 accident, it sounds that that would be different.

5 PROSPECTIVE JUROR: Yes, ma'am.

6 MS. CARNESALE: However, you know, I understand  
7 that must have been very traumatic for you. Do you think  
8 you'll be able to set that aside and listen?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 MS. CARNESALE: As Ms. Weirich explained earlier,  
11 it's very important that you jurors are going to be  
12 fact-finders in this matter. So it's very important that you  
13 listen closely to all the evidence. What I'm saying or what  
14 Mr. Bailey is saying is not evidence in this case. The  
15 evidence comes through the witness.

16 PROSPECTIVE JUROR: Okay.

17 MS. CARNESALE: Does everybody understand that?  
18 At the conclusion of the trial, after all the witnesses have  
19 testified, your job will be to remember the evidence you've  
20 heard, to take the law that is given to you by the Judge,  
21 apply the law to the facts and come up with a verdict. Does  
22 everybody understand that?

23 Now, the State has the burden of proof in this case.  
24 As Ms. Weirich explained, our burden is to prove to you beyond  
25 a reasonable doubt that Mr. Braswell the defendant in this

1 case killed his wife. And he's charged with first degree  
2 murder, which is an unlawful killing with premeditation. Does  
3 everybody understand that?

4 Do you understand that if the State proves to you  
5 beyond a reasonable doubt that that occurred, it is your duty  
6 to follow the law and hold him accountable and convict him as  
7 charged? Can everybody promise to do that if the State meets  
8 its burden and proves to you beyond a reasonable doubt that  
9 first degree murder was committed by Vern Braswell? Mr.  
10 Widner, is it?

11 PROSPECTIVE JUROR: Widner.

12 MS. CARNESALE: Would you have a problem with  
13 that?

14 PROSPECTIVE JUROR: No.

15 MS. CARNESALE: If the State proves to you through  
16 the evidence presented to you beyond a reasonable doubt that  
17 Vern Braswell killed his wife with premeditation unlawfully  
18 and intentionally, would you be able to convict him as  
19 charged?

20 PROSPECTIVE JUROR: Yes.

21 MS. CARNESALE: How about you, Ms. Clay?

22 PROSPECTIVE JUROR: Yes.

23 MS. CARNESALE: Mr. Jordan, are you shaking your  
24 head?

25 PROSPECTIVE JUROR: I don't know. I had a cousin

1 that got killed in the streets, and his murder got by with a  
2 little bit of less time and murdered somebody else so I don't  
3 know.

4 MS. CARNESALE: The man who killed your cousin  
5 didn't serve much time and then actually committed another  
6 murder?

7 PROSPECTIVE JUROR: Yeah.

8 MS. CARNESALE: And so that probably made you  
9 unhappy with the system. I'm sorry to hear that. How long  
10 ago was that?

11 PROSPECTIVE JUROR: About five or six years ago.

12 MS. CARNESALE: Was that here in Shelby County?

13 PROSPECTIVE JUROR: Yeah.

14 MS. CARNESALE: Was that a trial? Did it go to  
15 trial?

16 PROSPECTIVE JUROR: Yeah.

17 MS. CARNESALE: And you weren't satisfied with the  
18 verdict?

19 PROSPECTIVE JUROR: No.

20 MS. CARNESALE: Do you think that you'd be able to  
21 set aside what happened in that case and give both the State  
22 and Vern Braswell a fair trial?

23 PROSPECTIVE JUROR: I don't think I would.

24 MS. CARNESALE: You think that might affect your  
25 judgment in this matter?



1 PROSPECTIVE JUROR: Yeah.

2 MS. CARNESALE: To be more prejudiced for or  
3 against the defendant?

4 PROSPECTIVE JUROR: Probably against.

5 MS. CARNESALE: And you don't think you could  
6 separate that from what you hear in this case?

7 PROSPECTIVE JUROR: I probably wouldn't.

8 MS. CARNESALE: Your Honor, I'll submit  
9 Mr. Jordan.

10 THE COURT: All right. Mr. Jordan, I'll excuse  
11 you. Thank you for participating.

12 MS. CARNESALE: Anybody else for whatever reason  
13 feel that they would not be able to give the State or the  
14 defendant a fair trial in this matter? How about you,  
15 Mr. Oliver? Do you think that you can sit on this case, give  
16 both sides a fair trial?

17 PROSPECTIVE JUROR: Yes, I could.

18 MS. CARNESALE: Have you ever served on jury duty  
19 before?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 MS. CARNESALE: How long ago was that?

22 PROSPECTIVE JUROR: About ten, 11 years ago.

23 MS. CARNESALE: They really do get you every ten  
24 years.

25 PROSPECTIVE JUROR: Yeah.

1 MS. CARNESALE: Y'all probably well know that.  
2 Anything about that -- was that a civil or criminal case?

3 PROSPECTIVE JUROR: Criminal.

4 MS. CARNESALE: Criminal. Was it in this  
5 building?

6 PROSPECTIVE JUROR: Yeah, but I don't -- it's been  
7 11 years. I can't remember that.

8 MS. CARNESALE: Don't remember it very well. Did  
9 you actually sit on the jury? Get in the box?

10 PROSPECTIVE JUROR: Yes.

11 MS. CARNESALE: Was a verdict reached in your  
12 case?

13 PROSPECTIVE JUROR: Yes, it was.

14 MS. CARNESALE: Okay. Anything about that  
15 experience that might affect your ability to be fair in this  
16 case?

17 PROSPECTIVE JUROR: No.

18 MS. CARNESALE: How about you, Ms. Easley? Have  
19 you ever served on jury duty before?

20 PROSPECTIVE JUROR: No.

21 MS. CARNESALE: Now I wrote down that you work for  
22 a cleaners. Are you married?

23 PROSPECTIVE JUROR: Yes.

24 MS. CARNESALE: Does your husband work?

25 PROSPECTIVE JUROR: Uh-huh.

1 MS. CARNESALE: What does he do?

2 PROSPECTIVE JUROR: He works for Pyramid Trucking.

3 MS. CARNESALE: Is he a truck driver?

4 PROSPECTIVE JUROR: Yes.

5 MS. CARNESALE: Is he home this week so you can be  
6 sequestered if need be?

7 PROSPECTIVE JUROR: No, he won't be.

8 MS. CARNESALE: But that won't pose a problem for  
9 you?

10 PROSPECTIVE JUROR: No.

11 MS. CARNESALE: Now, Mr. Oliver, I left you out.  
12 Are you married?

13 PROSPECTIVE JUROR: No.

14 MS. CARNESALE: How about you, Ms. Jackson?

15 PROSPECTIVE JUROR: Widow.

16 MS. CARNESALE: And you work for Holiday Inn and  
17 Fed Ex?

18 PROSPECTIVE JUROR: Yes.

19 MS. CARNESALE: You're a busy lady. Have you ever  
20 served on jury duty before?

21 PROSPECTIVE JUROR: Yes.

22 MS. CARNESALE: How long ago was that?

23 PROSPECTIVE JUROR: About 12 years ago.

24 MS. CARNESALE: Was that civil or criminal?

25 PROSPECTIVE JUROR: I believe it was civil.

1 MS. CARNESALE: And were you -- was a verdict  
2 reached in that matter?

3 PROSPECTIVE JUROR: Yes.

4 MS. CARNESALE: I believe Mr. Bailey touched on  
5 the burden of proof is different in a civil and criminal case.  
6 And as Ms. Weirich said, the law in this case always comes  
7 from the judge. You understand that?

8 PROSPECTIVE JUROR: Yes.

9 MS. CARNESALE: Even if you remember anything  
10 about that old case, you need to set that aside. Is it Mr.  
11 Nagel? Are you married, sir?

12 PROSPECTIVE JUROR: Yes.

13 MS. CARNESALE: Is your wife employed?

14 PROSPECTIVE JUROR: Yes.

15 MS. CARNESALE: Where does she work?

16 PROSPECTIVE JUROR: Devita. It's a hemo-analysis  
17 company.

18 MS. CARNESALE: What does she do?

19 PROSPECTIVE JUROR: Some kind of a manager with a  
20 title about that long. I couldn't tell you.

21 MS. CARNESALE: Very important. Any reason why  
22 you can't sit with us this week and give this trial your full  
23 undivided attention?

24 PROSPECTIVE JUROR: No.

25 MS. CARNESALE: Have you ever served on a jury

1 before?

2 PROSPECTIVE JUROR: Yes.

3 MS. CARNESALE: How long ago?

4 PROSPECTIVE JUROR: Probably close to 15 years  
5 ago.

6 MS. CARNESALE: Was it civil or criminal?

7 PROSPECTIVE JUROR: Civil.

8 MS. CARNESALE: Was a verdict reached in that  
9 matter?

10 PROSPECTIVE JUROR: Yes.

11 MS. CARNESALE: Thank you, sir. Ms. Benton, are  
12 you married?

13 PROSPECTIVE JUROR: Yes.

14 MS. CARNESALE: Does your husband work?

15 PROSPECTIVE JUROR: Yes.

16 MS. CARNESALE: What does he do?

17 PROSPECTIVE JUROR: He's a groundskeeper at the  
18 University of Tennessee.

19 MS. CARNESALE: Downtown here? I mean, over in  
20 the medical?

21 PROSPECTIVE JUROR: Uh-huh, yeah.

22 MS. CARNESALE: Have you ever served on a jury  
23 before?

24 PROSPECTIVE JUROR: No, ma'am.

25 MS. CARNESALE: Thank you. And, Ms. Clay, are you

1 married?

2 PROSPECTIVE JUROR: Separated.

3 MS. CARNESALE: Okay. How long have you been  
4 separated?

5 PROSPECTIVE JUROR: A month after I got married.

6 MS. CARNESALE: We won't go into that.

7 PROSPECTIVE JUROR: You going to leave that alone.

8 MS. CARNESALE: Have you ever served on a jury  
9 before?

10 PROSPECTIVE JUROR: No, but I've been called for  
11 jury duty.

12 MS. CARNESALE: Any reason why you can't stay with  
13 us and give this trial your full attention?

14 PROSPECTIVE JUROR: No.

15 MS. CARNESALE: Mr. Widner, are you married?

16 PROSPECTIVE JUROR: Yes.

17 MS. CARNESALE: Where does your wife work?

18 PROSPECTIVE JUROR: She's a stay-at-home mom.

19 MS. CARNESALE: Any reason why you can't sit on  
20 this trial and give it your full attention?

21 PROSPECTIVE JUROR: I don't think so.

22 MS. CARNESALE: Mr. Owens, are you married, sir?

23 PROSPECTIVE JUROR: Separated.

24 MS. CARNESALE: Again, we won't ask. And I  
25 understand you're retired from the postal service?

1 PROSPECTIVE JUROR: Correct.

2 MS. CARNESALE: What did you do?

3 PROSPECTIVE JUROR: Postman.

4 MS. CARNESALE: Have you ever served on a jury?

5 PROSPECTIVE JUROR: '87 or '85. Same as this one.

6 MS. CARNESALE: Criminal?

7 PROSPECTIVE JUROR: Same as this one we in now.

8 MS. CARNESALE: Murder.

9 PROSPECTIVE JUROR: Murder, sequestered.

10 MS. CARNESALE: So you understand. It's not so  
11 bad; right? You can reassure them.

12 PROSPECTIVE JUROR: I understand, yeah.

13 MS. CARNESALE: Hopefully the accommodations have  
14 improved with time. I think they used to have a dorm in this  
15 building. Is that where you stayed?

16 PROSPECTIVE JUROR: Uh-huh.

17 MS. CARNESALE: Anything about that experience  
18 that would affect your ability to serve on this case?

19 PROSPECTIVE JUROR: It wouldn't affect, no. That  
20 experience wouldn't affect nothing.

21 MS. CARNESALE: You're eager to serve again, I'm  
22 sure.

23 PROSPECTIVE JUROR: I wouldn't say that.

24 MS. CARNESALE: But you understand how important  
25 it is? This is a very serious matter.

1 PROSPECTIVE JUROR: Yes, I do.

2 MS. CARNESALE: Have I gotten to everybody in the  
3 second row? I'm sorry. Ms. Bolton. Everybody starts to  
4 blend together after a while. I apologize. Are you married?

5 PROSPECTIVE JUROR: No.

6 MS. CARNESALE: You're retired from the County  
7 Schools? Were you a teacher?

8 PROSPECTIVE JUROR: Administrator.

9 MS. CARNESALE: How long did you work for the  
10 County?

11 PROSPECTIVE JUROR: 31 years.

12 MS. CARNESALE: Have you ever served on a jury  
13 before?

14 PROSPECTIVE JUROR: No.

15 MS. CARNESALE: Anything about this that you've  
16 heard so far or any reason in your personal life that you'd be  
17 unable to serve this week and give this trial your full  
18 undivided attention?

19 PROSPECTIVE JUROR: Don't have anything. I will  
20 be able to do that.

21 MS. CARNESALE: Thank you. And this is to the  
22 whole panel. Why don't we just go row by row. And again, if  
23 there is some reason that this question embarrasses you, we  
24 can approach the judge so everyone doesn't hear your answer  
25 but it's important to know some of this background



1 information. Has anyone close to you or any of yourself ever  
2 been arrested or charged with a crime?

3 PROSPECTIVE JUROR: DUI.

4 MS. CARNESALE: Was that you?

5 PROSPECTIVE JUROR: It was me.

6 MS. CARNESALE: Okay. What year was that?

7 PROSPECTIVE JUROR: '97.

8 MS. CARNESALE: Was that here in Shelby County?

9 PROSPECTIVE JUROR: Right, that's correct.

10 MS. CARNESALE: That would have been my office  
11 that prosecuted you then.

12 PROSPECTIVE JUROR: Probably would have been.

13 MS. CARNESALE: And not that that's a good thing,  
14 but my question is that you wouldn't hold that against me in  
15 this murder case?

16 PROSPECTIVE JUROR: No, I don't even know you.

17 MS. CARNESALE: Okay. Good. Or Ms. Weirich.  
18 Anybody else in the second row? Okay. Let me come back to  
19 you. Ms. Clay.

20 PROSPECTIVE JUROR: For a felony writing a check.  
21 I forgot about the check and it came back to haunt me.

22 MS. CARNESALE: Okay. So you didn't have funds at  
23 the time so then they charged you. Anything about that  
24 experience that would affect your ability to serve in this  
25 case and give the State a fair trial?

1 PROSPECTIVE JUROR: No, that was my fault.

2 MS. CARNESALE: Thank you. I appreciate your  
3 honesty. Anybody else on the front row? Second row? Okay.  
4 Mr. Oliver?

5 PROSPECTIVE JUROR: I was in -- I had got a charge  
6 one time where it was like a misdemeanor. They charged me for  
7 having a baked potato in a car, say used for paraphernalia.  
8 They said I was going to smoke it or something. I don't know.  
9 Seriously.

10 MS. CARNESALE: Okay. I haven't heard of that  
11 before. When was that?

12 PROSPECTIVE JUROR: Back in '95.

13 MS. CARNESALE: Here in Shelby County?

14 PROSPECTIVE JUROR: Yeah.

15 MS. CARNESALE: Were you actually arrested and  
16 brought downtown?

17 PROSPECTIVE JUROR: Yeah, for paraphernalia.

18 MS. CARNESALE: What happened to the case?

19 PROSPECTIVE JUROR: I guess they just threw it out  
20 or whatever. I got, like, fined and all that. But they threw  
21 it out.

22 MS. CARNESALE: Well, I'm sorry to hear that. Is  
23 there anything about -- again, that would have been my office  
24 and the District Attorney's office that prosecuted you. Do  
25 you think that would affect your ability to be fair in this

1 case?

2 PROSPECTIVE JUROR: No. No.

3 MS. CARNESALE: Well, thank you. I appreciate  
4 your honesty. Anybody else in the top row? You or anyone  
5 close to you? Mr. Guerrero?

6 PROSPECTIVE JUROR: I had one of my uncles he was  
7 charged with possession of marijuana.

8 MS. CARNESALE: Here in Shelby County?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 MS. CARNESALE: How long ago was that?

11 PROSPECTIVE JUROR: Four years ago.

12 MS. CARNESALE: And anything about that experience  
13 that might affect your ability to be fair in this case?

14 PROSPECTIVE JUROR: No.

15 MS. CARNESALE: Thank you. Ms. Benton?

16 PROSPECTIVE JUROR: I have a cousin that was  
17 charged with murder and he's doing time now in Nashville.  
18 It's been that long, a long time. It's been a long time.

19 MS. CARNESALE: A long time since it happened?

20 PROSPECTIVE JUROR: Yes.

21 MS. CARNESALE: And he's been in prison a long  
22 time?

23 PROSPECTIVE JUROR: Uh-huh.

24 MS. CARNESALE: Do you know who he was convicted  
25 of killing?

1 PROSPECTIVE JUROR: Not really. Another person.

2 MS. CARNESALE: Are you close to this cousin?

3 PROSPECTIVE JUROR: Unh-unh.

4 MS. CARNESALE: You don't hear from him or you  
5 don't send him anything?

6 PROSPECTIVE JUROR: No.

7 MS. CARNESALE: And again, as always the question  
8 is would that affect your ability to be fair in this case?

9 PROSPECTIVE JUROR: No, ma'am.

10 MS. CARNESALE: Anybody else that I missed?

11 PROSPECTIVE JUROR: I had a close relative  
12 convicted of a drug crime.

13 MS. CARNESALE: Where was that?

14 PROSPECTIVE JUROR: It was in Nashville.

15 MS. CARNESALE: Was that person serving time or  
16 did he have to serve time or anything?

17 PROSPECTIVE JUROR: Yes.

18 MS. CARNESALE: Anything about that that would  
19 affect your ability to sit in a criminal jury?

20 PROSPECTIVE JUROR: Not at all.

21 MS. CARNESALE: Thank you. Anybody else?

22 Ms. Sparks, I think we might have missed you earlier when we  
23 went through some of the questions. Are you married?

24 PROSPECTIVE JUROR: No, I'm divorced.

25 MS. CARNESALE: And you're self-employed and

1       you're in childcare.

2                   PROSPECTIVE JUROR: Yes.

3                   MS. CARNESALE: Have you ever served on a jury  
4 before?

5                   PROSPECTIVE JUROR: No.

6                   MS. CARNESALE: Now I understand your son is a  
7 police officer with the City?

8                   PROSPECTIVE JUROR: Yes.

9                   MS. CARNESALE: Do you know what division he works  
10 in?

11                   PROSPECTIVE JUROR: He works in the North  
12 precinct.

13                   MS. CARNESALE: Is he on patrol in a squad car?

14                   PROSPECTIVE JUROR: Yes.

15                   MS. CARNESALE: You will be hearing from some  
16 police officers. This is a Memphis Police Department case,  
17 that investigated the case. Will that affect your ability to  
18 be fair in this matter?

19                   PROSPECTIVE JUROR: No, not at all.

20                   MS. CARNESALE: Anybody else that has police  
21 officers as relatives or husbands? Wives? Okay.

22                   Everybody understands that the State has the burden to  
23 prove this case beyond a reasonable doubt and everyone agrees  
24 that if the State meets that burden, you will convict the  
25 defendant as charged. Is that fair? Everybody agree?

1 Ms. Moss, can you make me that promise?

2 PROSPECTIVE JUROR: Yes.

3 MS. CARNESALE: Your Honor, I'll pass the jury.

4 THE COURT: Mr. Bailey.

5 MR. W. BAILEY: Thank you, Your Honor. I want to  
6 speak directly to the new jurors primarily and a couple of  
7 things I want to ask you. When I was addressing the other  
8 jurors prior to your assuming the box, the jury box, was I  
9 speaking loud enough for you to have heard the questions that  
10 were put to the other jurors? Anybody couldn't understand any  
11 of those questions or want me to ask that question again?

12 Now I'm going to ask you would any of you answer any of  
13 those -- does it leap out at you that you may have answered  
14 one of those questions differently?

15 All right. Now let's start with you, Ms. Jackson. And  
16 I don't believe I -- did you say you're employed?

17 PROSPECTIVE JUROR: Yes, I am.

18 MR. W. BAILEY: Where, ma'am?

19 PROSPECTIVE JUROR: Holiday Inn Select on Democrat  
20 and Fed Ex.

21 MR. W. BAILEY: Did you say there's a Mr. Jackson?

22 PROSPECTIVE JUROR: No, I said he's deceased.

23 MR. W. BAILEY: Okay. Sorry to hear that. And  
24 you're a native lifelong Memphian?

25 PROSPECTIVE JUROR: Oh, yes.

1 MR. W. BAILEY: Thank you, ma'am. Mr. Nagel, did  
2 I pronounce that correctly?

3 PROSPECTIVE JUROR: Nagel.

4 MR. W. BAILEY: Nagel. And you are a loan officer  
5 with First Tennessee?

6 PROSPECTIVE JUROR: Commercial loan review. We  
7 grade commercial loans after they're made.

8 MR. W. BAILEY: I see. And how long have you been  
9 with First Tennessee?

10 PROSPECTIVE JUROR: 14 years.

11 MR. W. BAILEY: And your wife?

12 PROSPECTIVE JUROR: (Indiscernible).

13 MR. W. BAILEY: But you don't know her exact title  
14 I understand.

15 PROSPECTIVE JUROR: No.

16 MR. W. BAILEY: Ms. Benton, have you had any  
17 previous jury experience?

18 PROSPECTIVE JUROR: No, sir.

19 MR. W. BAILEY: Any of the rest of you new jurors  
20 had any previous experience?

21 PROSPECTIVE JUROR: I had grand jury experience.

22 MR. W. BAILEY: Mr. Wagner; is that correct?

23 PROSPECTIVE JUROR: Widner.

24 MR. W. BAILEY: Widner. And was that federal?

25 PROSPECTIVE JUROR: It was federal.

1 MR. W. BAILEY: How long did you serve?

2 PROSPECTIVE JUROR: It was four years ago.

3 MR. W. BAILEY: Got an opportunity to review and  
4 hear a lot of cases?

5 PROSPECTIVE JUROR: Yes, I was seated on the jury.

6 MR. W. BAILEY: And based on your experience, is  
7 there anything that would cause you -- that would seep over  
8 into this case that would cause you not to be a fair and  
9 impartial juror?

10 PROSPECTIVE JUROR: No, sir.

11 MR. W. BAILEY: Could you call a ball a ball and a  
12 strike a strike?

13 PROSPECTIVE JUROR: Yes.

14 MR. W. BAILEY: Ms. Clay, how about you, ma'am?

15 PROSPECTIVE JUROR: Yes, I would.

16 MR. W. BAILEY: Be fair and objective?

17 PROSPECTIVE JUROR: Yes, I would.

18 MR. W. BAILEY: Call it as you see it?

19 PROSPECTIVE JUROR: Call it as I see it.

20 MR. W. BAILEY: Give us a level playing field?

21 PROSPECTIVE JUROR: Yes, I would.

22 MR. W. BAILEY: All right. Ms. Easley, as I  
23 understand you -- is there a Mr. Easley?

24 PROSPECTIVE JUROR: Uh-huh, yes.

25 MR. W. BAILEY: And you work, been seven years at



1       which cleaners?

2                   PROSPECTIVE JUROR: Continental.

3                   MR. W. BAILEY: I'm sorry?

4                   PROSPECTIVE JUROR: Continental.

5                   MR. W. BAILEY: What do you do there, ma'am?

6                   PROSPECTIVE JUROR: Counter clerk.

7                   MR. W. BAILEY: Is there anything about this case  
8       that would prohibit you or bar you from being a fair and  
9       impartial juror?

10                  PROSPECTIVE JUROR: I don't think so.

11                  MR. W. BAILEY: You could call it as you see it?

12                  PROSPECTIVE JUROR: Uh-huh.

13                  MR. W. BAILEY: Ms. Bolton, how about you, ma'am?

14                  PROSPECTIVE JUROR: (Nodded head up and down.)

15                  MR. W. BAILEY: You've been with the County School  
16       System for how many years?

17                  PROSPECTIVE JUROR: 31 years.

18                  MR. W. BAILEY: Ma'am?

19                  PROSPECTIVE JUROR: 31 years.

20                  MR. W. BAILEY: In administration?

21                  PROSPECTIVE JUROR: Not the entire time but the  
22       last 12 years.

23                  MR. W. BAILEY: So you've been through three  
24       superintendents, I take it.

25                  PROSPECTIVE JUROR: Four.

1 MR. W. BAILEY: Enjoy your work?

2 PROSPECTIVE JUROR: Love it.

3 MR. W. BAILEY: Mr. Owens, how about you, sir?

4 PROSPECTIVE JUROR: Call it like it is.

5 MR. W. BAILEY: Call a ball a ball and a strike a  
6 strike?

7 PROSPECTIVE JUROR: Yes, sir.

8 MR. W. BAILEY: Ever play baseball?

9 PROSPECTIVE JUROR: Yes, sir, younger.

10 MR. W. BAILEY: So you know what we're talking  
11 about?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. W. BAILEY: Is it -- Mr. Brian, how do you  
14 pronounce your last name?

15 PROSPECTIVE JUROR: Oliver.

16 MR. W. BAILEY: Oliver. I can't read my own  
17 writing here. You play baseball?

18 PROSPECTIVE JUROR: I have.

19 MR. W. BAILEY: Call a ball a ball and a strike a  
20 strike in this case?

21 PROSPECTIVE JUROR: Absolutely.

22 MR. W. BAILEY: Won't lean one way or the other?

23 PROSPECTIVE JUROR: No.

24 MR. W. BAILEY: The fact that this young man sits  
25 over here under indictment, would you give him the benefit of

1 not having done anything, that he's in here to face a charge?

2 PROSPECTIVE JUROR: Absolutely. Absolutely.

3 MR. W. BAILEY: You wouldn't hesitate to do that?

4 PROSPECTIVE JUROR: No, he's innocent until proven  
5 guilty, sir.

6 MR. W. BAILEY: Now, check and see did I omit  
7 anybody. I don't think so. Let me ask, one of the things --  
8 a key -- an essential element in a first degree murder case is  
9 that they've got to prove beyond a reasonable doubt two  
10 things: That the murder was premeditated and it was  
11 intentional. That's what the law says.

12 Now if you find either one of you that the murder was  
13 not premeditated and intentional, would any of you have any  
14 problem returning a verdict on first degree murder of not  
15 guilty? How about you, sir?

16 PROSPECTIVE JUROR: (Shook head left to right.)

17 MR. W. BAILEY: You, ma'am?

18 PROSPECTIVE JUROR: Unh-unh.

19 MR. W. BAILEY: You?

20 PROSPECTIVE JUROR: No.

21 MR. W. BAILEY: You, sir.

22 PROSPECTIVE JUROR: You.

23 MR. W. BAILEY: You, sir?

24 PROSPECTIVE JUROR: No.

25 MR. W. BAILEY: You, ma'am? Ms. Bolton, would

1       you?

2                   PROSPECTIVE JUROR: No, not a problem.

3                   MR. W. BAILEY: How about you, Mr. Owens? If you  
4 found that premeditation wasn't proved to you beyond a  
5 reasonable doubt, how would you vote, sir?

6                   PROSPECTIVE JUROR: I wouldn't have a problem  
7 voting no.

8                   MR. W. BAILEY: Not guilty?

9                   PROSPECTIVE JUROR: Not guilty.

10                  MR. W. BAILEY: Now if you find that the  
11 prosecution failed to overcome the presumption of innocence  
12 and they're required to do that, they've got to overcome that  
13 by proving with proof beyond a reasonable doubt premeditation,  
14 an intentional killing on the first degree murder charge.  
15 It's just that simple. If you say to yourself, if you say I  
16 can't -- I don't have an answer as to how she died, in this  
17 instance talking about Mrs. Braswell or that it was  
18 accidental, but you're satisfied that the prosecution hasn't  
19 proven that it was premeditated and intentional, would you  
20 have any problem with voting not guilty? How would you vote,  
21 sir.

22                  PROSPECTIVE JUROR: Not guilty.

23                  MR. W. BAILEY: You, ma'am?

24                  PROSPECTIVE JUROR: Not guilty.

25                  MR. W. BAILEY: You, ma'am?

1 PROSPECTIVE JUROR: Not guilty.

2 MR. W. BAILEY: You, ma'am?

3 PROSPECTIVE JUROR: Not guilty.

4 MR. W. BAILEY: You, sir?

5 PROSPECTIVE JUROR: Not guilty.

6 MR. W. BAILEY: You, ma'am?

7 PROSPECTIVE JUROR: Not guilty.

8 MR. W. BAILEY: You, ma'am?

9 PROSPECTIVE JUROR: Not guilty.

10 MR. W. BAILEY: You, Ms. Bolton?

11 PROSPECTIVE JUROR: Not guilty.

12 MR. W. BAILEY: Mr. Oliver, how about you, sir?

13 PROSPECTIVE JUROR: Not guilty.

14 MR. W. BAILEY: Now I have talked with the other  
15 jurors about alternative sex styles or sex play. And we had  
16 talked about how graphic that the presentation of evidence  
17 might be in terms of sex toys and devices that the couple may  
18 have used. Now would that cause any of you to be so  
19 embarrassed that you would be uncomfortable in this kind of  
20 case, that you couldn't sit as fair and impartial jurors? Any  
21 of you?

22 And you know we're not here to judge the sexual  
23 behavior in the context of passing moral judgment. That's not  
24 what we're here for. I don't know of any trial where one --  
25 where a jury has sat in moral judgment on one's sex

1 preferences, his sex style or her sex style. That's not what  
2 we're here for. You're not here to determine, to morally  
3 judge him or Mrs. Braswell. It's not a case about morality.

4 It's not a case about religion. Any of you have any  
5 religious belief that would not allow you to sit as a fair and  
6 impartial juror in a case of this sort when we're talking  
7 about possible alternative sexual behavior that may differ  
8 from what you've been understood to believe what was basic?  
9 Anybody feel that you've got any kind of institutional beliefs  
10 like religious beliefs or philosophical beliefs that would  
11 cause you to do other than look at the proof in this case and  
12 judge this case solely on the proof?

13 Now there may be character proof introduced in this  
14 case. And His Honor will tell you how to judge and evaluate  
15 character proof. It stands as a witness in behalf of the  
16 person for whom the character proof is submitted. And if  
17 there is character proof here, and His Honor will tell you the  
18 ground rules under which you evaluate and judge character  
19 proof, but if you feel that the character proof measures up,  
20 could you give it the benefit of character proof?

21 And character proof is admitted on two questions, not  
22 that he -- that a defendant couldn't have committed the act.  
23 That ain't the purpose of character proof. Character proof is  
24 limited to what is his reputation for truth and veracity and  
25 community and would you believe that's the purpose of

1 character proof? Can y'all follow that?

2 Listen to character proof. And of course character  
3 proof can be assailed. It can be attacked. Prosecution asks  
4 the character witnesses about other instances -- incidents  
5 that they feel might have some materiality or relevance in  
6 terms of getting at how well that character witness really  
7 knows this person. Would you weigh all of that though fairly  
8 and impartially? How about you, ma'am, Ms. Easley? Would  
9 you?

10 PROSPECTIVE JUROR: Uh-huh.

11 MR. W. BAILEY: Now one other thing, too, again  
12 getting into -- this kind of case is unusual in that you open  
13 up the marital lifestyle of the parties. And one of the  
14 things that I want to ask you about is that there may be some  
15 proof that -- and I'm asking all of you jurors -- that  
16 Mr. Braswell may have dated outside the marriage. And you  
17 might hear from a dear friend of his. Would that cause any of  
18 y'all to hold that against him on this first degree murder  
19 charge? Any of you? Any of you would be so morally turned  
20 off because he may have had a girlfriend or accused of having  
21 a girlfriend that you would be so turned off that you couldn't  
22 sit there and fairly and impartially judge him?

23 So I guess I take it by the nature of your answers and  
24 responses that everybody understands that this is not a case  
25 about the moral sexual behavior of the Braswells, except to

1 the extent of what sort of sexual occurrences went on, if any,  
2 that resulted in this death. Can all of y'all understand  
3 that? Any problems?

4 And you may hear -- one thing you may hear references  
5 about is -- and again, I don't think I asked -- I may have  
6 asked you about a sex toy, I believe I did. But I don't know  
7 whether you've read incidents about sexual play called choking  
8 games. I don't know whether any of you may have heard that or  
9 not, but whatever you've heard about it is not important  
10 because you're not to bring that, whatever you've been exposed  
11 to in that regard whatever you read about in this trial, that  
12 you are to get your evidence solely from the witness stand.  
13 And I take it that all of you are prepared to do that.

14 And I understood that among you new jurors that none of  
15 you are related or have any close ties with the prosecutor's  
16 office and you don't know these two prosecutors in the  
17 courtroom today.

18 And you understand that we're all on a level playing  
19 field, that the prosecutor doesn't have any edge on this case  
20 anymore than the Defense does, than we do. You understand  
21 that we weren't there and any statements that you've heard us  
22 make or anything that you hear us make in the opening  
23 statements, which will be done probably sometime in the  
24 morning, that those remarks are not to be taken as evidence in  
25 the case because nobody -- none of the people sitting at



1 counsel table was here. We don't know anymore about this case  
2 than you do. So we don't have any special knowledge or any  
3 special edge.

4 Can all of you abide by that and treat us as lawyers  
5 and not people who were there on the scene, that we don't know  
6 anymore about what happened between the Braswells than you do?  
7 Our job is just to bring before you what we have been able to  
8 gather.

9 Now one final thing and that is we've talked about if  
10 you found that premeditation and intentional -- and intent  
11 weren't there that you wouldn't have any problem on voting not  
12 guilty. You expressly said that and we're going to hold you  
13 to it.

14 Now I'm checking my notes here because this case is so  
15 important. I've -- oh, my expert. We're going to -- you're  
16 going to hear, we anticipate, testimony regarding -- from an  
17 expert regarding erotic asphyxiation. That means involving  
18 the choking experience in a sexual relationship. And can you  
19 evaluate that expert's testimony, Ph.D. from St. Louis the  
20 same way you evaluate the testimony of other witnesses?

21 And you're also going to hear testimony, we anticipate,  
22 from our own County medical examiner regarding what is known  
23 as autoasphyxiation. And again, asphyxiation meaning to  
24 constrain or choke off the air dealing with certain vessels  
25 running to the brain transporting the blood.

1           Now would that in any sort of way cause you not to be  
2     able to follow the proof because we're going to get into that,  
3     we anticipate about autoasphyxiation, again that word where  
4     people become hyponoxemia (phonetically spelled) setting in  
5     and that sort of thing. If you hear all those scientific  
6     terms -- and they'll explain to you what they mean. They'll  
7     explain to you what asphyxiation -- what the significance of  
8     it is and what we're talking about here today. That's what  
9     experts are for, to break it down for me. They have to break  
10    it down for me as well as jurors.

11           Because I didn't -- but in any event, as I sit, I  
12    understand that all of you can be fair and impartial and  
13    there's nothing about this case religiously or morally that  
14    would not cause you not to be able to sit as fair and  
15    impartial jurors?

16           Would Your Honor indulge me?

17           THE COURT: Yes, sir.

18           MS. WEIRICH: Judge, if Mr. Bailey is finished,  
19    can we approach?

20           THE COURT: You may.

21           MR. W. BAILEY: I'm sorry, we're finished.

22                   (Bench conference commenced.)

23           MS. WEIRICH: With regard to Ms. Clay, I couldn't  
24    hear her. I got the impression that she was convicted of a  
25    felony passing bad check. My understanding would be that she

1 would be excluded but maybe I misunderstood her, too.

2 THE COURT: I don't think it was ever directly  
3 asked of her. But I could ask her now. Ms. Clay, would you  
4 step up here a minute, please. The matter that you had with  
5 the check, how long ago was that?

6 PROSPECTIVE JUROR: About eight years ago, seven  
7 years ago.

8 THE COURT: And were you actually charged with  
9 that?

10 PROSPECTIVE JUROR: Yeah, made restitution, paid  
11 it off.

12 THE COURT: And what happened to the case?

13 PROSPECTIVE JUROR: Threwed it out.

14 THE COURT: You were not convicted at any point?

15 PROSPECTIVE JUROR: Unh-unh. They erased it from  
16 my record.

17 THE COURT: So you made restitution.

18 PROSPECTIVE JUROR: And can I say this? He looks  
19 kind of familiar.

20 THE COURT: The defendant does?

21 PROSPECTIVE JUROR: Yeah. I mean, I stay on  
22 Summer. It look like he's been around.

23 THE COURT: You live on Summer?

24 PROSPECTIVE JUROR: Yeah.

25 THE COURT: Where on Summer?

1 PROSPECTIVE JUROR: Off of Tillman in that area.  
2 I mean, he looks like he worked at a hospital that I worked at  
3 a long time ago at Baptist, St. Francis.

4 MS. WEIRICH: His wife was in the medical field.  
5 She may have worked in the hospitals.

6 THE COURT: But he looks familiar but you can't  
7 say for sure?

8 PROSPECTIVE JUROR: I can't say for sure.

9 THE COURT: Thank you. You may be seated.  
10 Mr. Bailey, do you know whether your client lived anywhere  
11 near Summer and Tillman?

12 MR. W. BAILEY: Where he lives now?

13 THE COURT: Where he has lived over the past  
14 several years?

15 MR. J. BAILEY: No, he's never lived over there.  
16 His mother lived over in the Douglas Community, which is not  
17 far from there. But I think that his wife worked at an agency  
18 that contracted with those hospitals. I think that might be

19 --

20 MS. WEIRICH: As did his girlfriend.

21 THE COURT: Did he ever work in the hospitals?

22 MR. J. BAILEY: No.

23 THE COURT: But he may well have frequented them.

24 MR. J. BAILEY: That's possible.

25 (Said bench conference concluded.)

1 MS. WEIRICH: While they're discussing, Judge, may  
2 I step out briefly?

3 THE COURT: All right. Mr. Oliver, Mr. Owens and  
4 Ms. Bolton, y'all are excused at this time. Thank you very  
5 much. Please check back tomorrow morning across the street in  
6 the large jury room. Mr. Widner, if you would have a seat on  
7 the end of the back row, please. And, Ms. Clay, the seat  
8 right behind you on the end of the middle row. And,  
9 Ms. Benton, the seat right behind you there in the middle of  
10 the middle row.

11 Mr. Bailey, you need to challenge.

12 MR. J. BAILEY: Just one second, Your Honor.

13 THE COURT: Ms. Benton and Ms. Clay, y'all are  
14 excused at this time. Thank you very much for your  
15 participation. Check back across the street tomorrow morning.  
16 And, Mr. Nagel and Ms. Jackson, if you'd have the two seats in  
17 the middle row there, please.

18 Mr. Nagel, you're excused at this time. Thank you very  
19 much for your participation.

20 MS. WEIRICH: May we approach, Judge?

21 THE COURT: You may.

22 (Bench conference commenced.)

23 MS. WEIRICH: We would renew our Batson challenge.

24 THE COURT: All right. Well, I will note that  
25 five of the eight challenges have now been exercised all

1 against Caucasians. So I will state that from this point  
2 forward if anymore are exercised against Caucasians, we will  
3 have to have an out-of-jury hearing. The threshold would have  
4 been met at that point.

5 MR. J. BAILEY: We also now have several on the  
6 jury now, Judge.

7 THE COURT: Well, there aren't enough challenges  
8 -- I will note you are correct, that there have been a couple  
9 of rounds where you have passed and not challenged and that's  
10 a factor that does enter into it. So I acknowledge that and  
11 we'll move on at this point.

12 MR. W. BAILEY: In fact, the panel that's  
13 currently sitting has five whites.

14 THE COURT: I understand that. That is not the  
15 test --

16 MR. W. BAILEY: I understand.

17 THE COURT: -- applied. That has no bearing on  
18 relevance whatsoever at this point. None. But, Mr. Bailey,  
19 what I just mentioned does have some bearing and that is if  
20 you pass a round without challenging anybody, then that  
21 factors into it. So at this point we'll move on, but be  
22 forewarned that we're getting -- we're at the threshold now.

23 MR. W. BAILEY: Very well. Thank you.

24 (Said bench conference concluded.)

25 THE COURT: You may call seven more jurors.

1 DEPUTY LAFFERTY: 60.

2 THE COURT: Thomas West.

3 DEPUTY LAFFERTY: 15.

4 THE COURT: Constance Fite.

5 DEPUTY LAFFERTY: 23.

6 THE COURT: Marvin Oliver.

7 DEPUTY LAFFERTY: 6.

8 THE COURT: W.B. Wade.

9 DEPUTY LAFFERTY: 51.

10 THE COURT: Larry Braddock.

11 DEPUTY LAFFERTY: 32.

12 THE COURT: Frank Gillespie.

13 DEPUTY LAFFERTY: 48.

14 THE COURT: John Glover.

15 Mr. West, are you employed, sir?

16 PROSPECTIVE JUROR: I'm a retired surgeon.

17 THE COURT: All right, sir.

18 MR. J. BAILEY: Your Honor, there's something I  
19 need to bring to the Court's attention.

20 THE COURT: Okay.

21 (Bench conference commenced.)

22 MR. J. BAILEY: Mr. Oliver is my son's basketball  
23 coach over at Booker T. Washington so I just want to go ahead  
24 and save some time and let the Court know that now.

25 THE COURT: Mr. Oliver's been excused.

1 MR. BAILEY: No. He's my son's basketball coach  
2 currently.

3 THE COURT: Thank you. I'll excuse him.

4 (Said bench conference concluded.)

5 THE COURT: Dr. West, could you stay with us for a  
6 few days on a sequestered jury?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Thank you. Ms. Fite, are you  
9 employed?

10 PROSPECTIVE JUROR: I am, the law firm of Baker  
11 Donelson.

12 THE COURT: What do you do with them?

13 PROSPECTIVE JUROR: I am an information technology  
14 trainer.

15 THE COURT: How long have you been with them?

16 PROSPECTIVE JUROR: 31 years.

17 THE COURT: They don't do much criminal work in  
18 that firm?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Probably none. But having worked  
21 around lawyers all these years, is there anything about your  
22 job with the law firm that you think would affect your ability  
23 to be fair and impartial on this jury?

24 PROSPECTIVE JUROR: No, not at all.

25 THE COURT: And could you stay with us for a few



1 days on a sequestered jury?

2 PROSPECTIVE JUROR: I can.

3 THE COURT: And, Mr. Oliver, I'm informed that you  
4 know Mr. J. Bailey and his son so I think I'll go ahead and  
5 excuse you at this time. Thank you, though, for your patience  
6 today. Please check back tomorrow morning across the street.  
7 Mr. Wade, are you employed?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Where?

10 PROSPECTIVE JUROR: With International Paper.

11 THE COURT: What do you do with them?

12 PROSPECTIVE JUROR: I manage global sales.

13 THE COURT: How long have you been with them?

14 PROSPECTIVE JUROR: 22 years.

15 THE COURT: Could you stay with us for a few days  
16 on a sequestered jury?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you. Mr. Braddock, are you  
19 employed?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Where?

22 PROSPECTIVE JUROR: Self-employed.

23 THE COURT: What type of work?

24 PROSPECTIVE JUROR: Lawn service.

25 THE COURT: Could you stay with us for a few days

1 on a sequestered jury?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you. Mr. Gillespie, are you  
4 employed?

5 PROSPECTIVE JUROR: Yes, I am.

6 THE COURT: Where?

7 PROSPECTIVE JUROR: I work at Fed Ex.

8 THE COURT: What do you do for them?

9 PROSPECTIVE JUROR: I'm a telecommunications  
10 specialist.

11 THE COURT: And how long have you been with them?

12 PROSPECTIVE JUROR: 27 years.

13 THE COURT: Could you stay with us for a few days  
14 on a sequestered jury?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you. Mr. Glover, are you  
17 employed?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Where?

20 PROSPECTIVE JUROR: Smith & Nephew Orthopaedics.

21 THE COURT: How long have you been with them?

22 PROSPECTIVE JUROR: 32 years.

23 THE COURT: And could you stay with us for a few  
24 days on a sequestered jury?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Why is that, sir?

2 PROSPECTIVE JUROR: Because I've got animals and I  
3 ain't got nobody to feed them, cats, stuff like that.

4 THE COURT: I'll excuse you, sir. Thank you. If  
5 you three would move down one, please. You may call two more  
6 jurors.

7 DEPUTY LAFFERTY: 28.

8 THE COURT: Robert Dawkins.

9 DEPUTY LAFFERTY: 37.

10 THE COURT: Melvin Morris.

11 Mr. Dawkins, are you employed?

12 PROSPECTIVE JUROR: Yes, sir, I am.

13 THE COURT: Where?

14 PROSPECTIVE JUROR: Bellevue Baptist Church.

15 THE COURT: What do you do for them?

16 PROSPECTIVE JUROR: I'm president of the Bellevue  
17 Foundation.

18 THE COURT: And how long have you held that  
19 position?

20 PROSPECTIVE JUROR: For five years.

21 THE COURT: Okay. And could you stay with us on a  
22 sequestered jury for a few days?

23 PROSPECTIVE JUROR: Well, I've been thinking about  
24 that. It would be hard but I guess I'd have to do it. It's  
25 just a two-man office and I'm the president.

1 THE COURT: Right. But you feel as though you  
2 could make arrangements for -- from a work standpoint, you  
3 feel it would be difficult is that your concern?

4 PROSPECTIVE JUROR: Yes, sir, I think it would be.  
5 I think there's also an issue with the nature of the trial.

6 THE COURT: That you feel might affect your  
7 ability?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: To listen to it fairly and  
10 impartially? I'll go ahead and excuse you, Mr. Dawkins.  
11 Thank you for being down here. Please come back tomorrow  
12 morning across the street.

13 Mr. Morris, are you employed?

14 PROSPECTIVE JUROR: Yes, sir, I am.

15 THE COURT: Where?

16 PROSPECTIVE JUROR: (Indiscernible) Line trucking  
17 company.

18 THE COURT: How long have you been with them?

19 PROSPECTIVE JUROR: 16 years.

20 THE COURT: What do you do for them?

21 PROSPECTIVE JUROR: Warehouseman.

22 THE COURT: And could you stay with us for a few  
23 days on a sequestered jury?

24 PROSPECTIVE JUROR: Yes, I could. But on behalf  
25 -- by me knowing Mr. Bailey, me and him former classmates and

1 friends and in the past, I feel like I would like to be  
2 excused at this time.

3 THE COURT: Okay. Thank you for calling that to  
4 our attention. I'll excuse you, Mr. Morris. Thank you, sir.  
5 You may call two more jurors.

6 DEPUTY LAFFERTY: 1.

7 THE COURT: Glenith Calvin.

8 DEPUTY LAFFERTY: 27.

9 THE COURT: Sheila Gray.

10 Mr. Calvin, are you employed, sir?

11 PROSPECTIVE JUROR: Yes, sir, I am.

12 THE COURT: Where?

13 PROSPECTIVE JUROR: Technicolor Distributions.

14 THE COURT: How long have you been there?

15 PROSPECTIVE JUROR: Two years.

16 THE COURT: And could you stay with us on a  
17 sequestered jury for a few days?

18 PROSPECTIVE JUROR: Yes, but some comments that  
19 you all made earlier about people knowing people, I know  
20 Walter Bailey.

21 THE COURT: Okay. How long have you known  
22 Mr. Bailey?

23 PROSPECTIVE JUROR: Back when there used to be --  
24 that's a long time ago, about 20 years ago.

25 THE COURT: Okay. I'll excuse you. Thank you for

1 bringing that to our attention.

2 And, Ms. Gray, are you employed?

3 PROSPECTIVE JUROR: Yes, I am.

4 THE COURT: Where?

5 PROSPECTIVE JUROR: State of Tennessee University  
6 of Memphis.

7 THE COURT: What do you do?

8 PROSPECTIVE JUROR: Business and finance.

9 THE COURT: How long have you been there?

10 PROSPECTIVE JUROR: Three years.

11 THE COURT: Could you stay with us on a  
12 sequestered jury for a few days?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you. If you would move down one  
15 seat, please. And you may call one more juror.

16 DEPUTY LAFFERTY: 36.

17 THE COURT: Jan Kinard. Ms. Kinard, are you  
18 employed?

19 PROSPECTIVE JUROR: Yes, I am.

20 THE COURT: Where?

21 PROSPECTIVE JUROR: I work for Judy McClellan and  
22 Crye-Leike Realtors.

23 THE COURT: And how long have you been with them?

24 PROSPECTIVE JUROR: Beginning my fifth year. I  
25 was a paralegal before I went to work for Judy.

1 THE COURT: With whom?

2 PROSPECTIVE JUROR: Williams, McDaniel, Wolfe and  
3 Womack, estate probate and tax.

4 THE COURT: Could you stay with us on a  
5 sequestered jury for a few days?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: And, Mr. Braddock, you had your hand  
8 up?

9 PROSPECTIVE JUROR: I also know Brother Bailey  
10 through my brother-in-law.

11 THE COURT: Brother Bailey.

12 PROSPECTIVE JUROR: Through my brother-in-law I  
13 know him.

14 THE COURT: Mr. Bailey?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And do you know him --

17 PROSPECTIVE JUROR: Just as meeting.

18 THE COURT: You don't know him personally?

19 PROSPECTIVE JUROR: No.

20 THE COURT: You're not a long-time personal friend  
21 or anything?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Met him through your brother-in-law on  
24 how many occasions?

25 PROSPECTIVE JUROR: Just at passing.

1 THE COURT: Okay. Do you think -- and I guess  
2 you're the only one that can answer this. Do you think that  
3 that would affect your ability to listen impartially to the  
4 case?

5 PROSPECTIVE JUROR: Oh, no. No.

6 THE COURT: You could listen to the proof and to  
7 what the lawyers say, including Mr. Bailey, and still base a  
8 verdict on the proof and the law?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And not be unduly swayed by  
11 Mr. Bailey. You'd want to listen to what he said, of course,  
12 but you could set aside your knowledge and friendship?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Is that a fair statement?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: I don't want to put words in your  
17 mouth. Thank you for bringing that to our attention.  
18 Ms. Weirich.

19 MS. WEIRICH: Thank you, Your Honor. Good  
20 afternoon. I'm going to direct my comments to the seven of  
21 you that are new with us. The first question being were all  
22 of you able to hear everything that's been discussed here this  
23 afternoon?

24 PROSPECTIVE JUROR: Yes.

25 MS. WEIRICH: Just a little review. What are the



1 three tools that jurors have to use?

2 PROSPECTIVE JUROR: Common sense.

3 MS. WEIRICH: Yes. What else?

4 PROSPECTIVE JUROR: Evidence.

5 MS. WEIRICH: And what comes from the judge?

6 PROSPECTIVE JUROR: The law.

7 MS. WEIRICH: That's right, the only three things  
8 you can use. And there's no room in this courtroom or any  
9 other for sympathy or prejudice. Were you all able to hear us  
10 when we were talking about beyond a reasonable doubt and what  
11 it means and more specifically what it doesn't mean, that  
12 we're not held to proving the case beyond all doubt.

13 Do you agree that it would be impossible, Dr. West, for  
14 me to prove to you beyond all doubt that anything happened?

15 PROSPECTIVE JUROR: Yes.

16 MS. WEIRICH: You would have to see it, wouldn't  
17 you?

18 PROSPECTIVE JUROR: Yes.

19 MS. WEIRICH: Okay. And the law allows for that  
20 human characteristic, if you will. It doesn't require that of  
21 us.

22 Premeditation is a word that has come into play. It  
23 doesn't have to exist in the mind of the defendant for a set  
24 period of time. It just has to exist before the killing.

25 Intent is another word we talked about. How do we know

1 what someone's intent might be? By what?

2 PROSPECTIVE JUROR: Their actions.

3 MS. WEIRICH: Their actions, their words, things  
4 like that. Dr. West, there may be -- or there will be some  
5 doctors that will testify in this case and they may use terms  
6 that I ask or Ms. Carnesale asks them to explain to the jury  
7 and you might obviously already know what those words mean and  
8 may already be six steps ahead everyone else. Can you put  
9 your vast medical training and your vast medical experience  
10 aside and just focus on what you learn about this case from  
11 the courtroom?

12 PROSPECTIVE JUROR: Yes, I think so.

13 MS. WEIRICH: Okay. Were you a specific type of  
14 surgeon?

15 PROSPECTIVE JUROR: General surgeon.

16 MS. WEIRICH: Where did you practice?

17 PROSPECTIVE JUROR: Baptist.

18 MS. WEIRICH: When did you retire?

19 PROSPECTIVE JUROR: 1996.

20 MS. WEIRICH: Okay. All right. So any -- you  
21 won't feel the temptation to hold a class or hold a lecture  
22 back in the jury room about any medical term or concepts  
23 that might --

24 PROSPECTIVE JUROR: Not at all.

25 MS. WEIRICH: All right. Probably be relieved not

1 to have to.

2 All right. And, again, to you the judge already asked  
3 you this a little bit. I know that Baker Donelson hardly does  
4 any criminal work unless they just have to, but anything about  
5 the exposure that you've had to the lawyers and to the clients  
6 and hearing what you hear on a daily basis, some of that may  
7 sound familiar to you here in a courtroom. Can you separate  
8 your legal knowledge from what goes on at Baker Donelson from  
9 this courtroom?

10 PROSPECTIVE JUROR: Definitely.

11 MS. WEIRICH: And just reach a verdict based upon  
12 what you hear within the confines of this courtroom and your  
13 common sense?

14 PROSPECTIVE JUROR: Right.

15 MS. WEIRICH: Okay. All right. Have any of the  
16 seven of you been the victim of a crime or had a close friend  
17 or family member that's been a victim of a violent crime?  
18 Yes, sir?

19 PROSPECTIVE JUROR: Yes, capital murder.

20 MS. WEIRICH: Sir?

21 PROSPECTIVE JUROR: Yes. Not a victim but I know  
22 someone.

23 MS. WEIRICH: What were they a victim of?

24 PROSPECTIVE JUROR: Capital murder.

25 MS. WEIRICH: They were killed? You know someone

1 that was killed?

2 PROSPECTIVE JUROR: Yes.

3 MS. WEIRICH: Or you know the person that was --

4 PROSPECTIVE JUROR: The person accused of the  
5 killing.

6 MS. WEIRICH: And are they currently -- what is  
7 the situation? Is the case pending?

8 PROSPECTIVE JUROR: No.

9 MS. WEIRICH: It's over?

10 PROSPECTIVE JUROR: They doing time.

11 MS. WEIRICH: They're doing time. Did you know  
12 the person that was killed as well?

13 PROSPECTIVE JUROR: No.

14 MS. WEIRICH: You just knew the defendant. All  
15 right. How long ago was the incident?

16 PROSPECTIVE JUROR: 11 years ago.

17 MS. WEIRICH: Did you come -- was there a trial?

18 PROSPECTIVE JUROR: Yes.

19 MS. WEIRICH: Did you attend the trial? Did you  
20 testify at the trial?

21 PROSPECTIVE JUROR: No.

22 MS. WEIRICH: All right. And is there anything  
23 about that experience that would keep you from giving both  
24 sides of this case a fair trial?

25 PROSPECTIVE JUROR: I'm not sure.

1 MS. WEIRICH: Okay. There might be?

2 PROSPECTIVE JUROR: Might be. I'm not sure.

3 MS. WEIRICH: Well, it's really only a question  
4 that only you can answer. Was there -- you just don't know.

5 PROSPECTIVE JUROR: I guess my problem with it, I  
6 didn't agree with the --

7 MS. WEIRICH: With the verdict?

8 PROSPECTIVE JUROR: Yes.

9 MS. WEIRICH: Okay. Okay. Because of your  
10 connection with the person accused?

11 PROSPECTIVE JUROR: Exactly. Exactly, and what  
12 they were accused for.

13 MS. WEIRICH: And that might be kind of hard for  
14 you to separate?

15 PROSPECTIVE JUROR: Yes.

16 MS. WEIRICH: Understanding that it might be  
17 difficult and understanding as well that we don't expect you  
18 all to come to us having had no life experiences and to have  
19 lived life with blinders on, we're not asking you to forget  
20 that, but what the situation we don't want to see arise is  
21 that you can't evaluate the evidence and the law fairly. In  
22 other words, what you experienced when you sat in court and  
23 watched the verdict being returned would so cloud your mind  
24 this week that you wouldn't be able to give both sides a fair  
25 trial.

1 PROSPECTIVE JUROR: It won't cloud it.

2 MS. WEIRICH: Okay. You don't think it will come  
3 into play?

4 PROSPECTIVE JUROR: No, I don't think so.

5 MS. WEIRICH: In your deliberations?

6 PROSPECTIVE JUROR: I don't think so. And I hope  
7 not.

8 MS. WEIRICH: Okay. Can you promise us that  
9 you'll only return a verdict based upon the law, the evidence,  
10 and your common sense?

11 PROSPECTIVE JUROR: Yes.

12 MS. WEIRICH: And that you won't allow sympathy or  
13 prejudice back there?

14 PROSPECTIVE JUROR: Yes.

15 MS. WEIRICH: Okay. All right. Anyone else?  
16 Yes, ma'am?

17 PROSPECTIVE JUROR: My cousin was murdered.

18 MS. WEIRICH: Okay. How long ago was that?

19 PROSPECTIVE JUROR: Nine years ago not in  
20 Tennessee.

21 MS. WEIRICH: And again, the same question to you,  
22 was there anything about that --

23 PROSPECTIVE JUROR: No.

24 MS. WEIRICH: From giving both sides a fair trial?

25 PROSPECTIVE JUROR: No.

1 MS. WEIRICH: All right. Anyone else? Yes,  
2 ma'am?

3 PROSPECTIVE JUROR: Family member was injured.

4 MS. WEIRICH: Okay. Seriously injured?

5 PROSPECTIVE JUROR: Seriously, yeah.

6 MS. WEIRICH: Okay. How long ago was that?

7 PROSPECTIVE JUROR: About a year or two.

8 MS. WEIRICH: Okay. And were they injured as a  
9 result of a criminal act?

10 PROSPECTIVE JUROR: Yes.

11 MS. WEIRICH: Okay. Was it a domestic situation?  
12 Or do you know?

13 PROSPECTIVE JUROR: Well, I don't know how to  
14 explain it. He was attacked.

15 MS. WEIRICH: Okay. All right. By someone he  
16 knew or someone he didn't know?

17 PROSPECTIVE JUROR: Someone he knew.

18 MS. WEIRICH: Okay. And is there a case pending  
19 because of that?

20 PROSPECTIVE JUROR: No, ma'am.

21 MS. WEIRICH: Was anyone caught?

22 PROSPECTIVE JUROR: Yes, ma'am.

23 MS. WEIRICH: The person that attacked him?

24 PROSPECTIVE JUROR: Uh-huh.

25 MS. WEIRICH: Okay. But you don't know what's

1 happened to the case or what the outcome of the case was?

2 PROSPECTIVE JUROR: No, I don't, since that's been  
3 a couple of years and I never went to court for it or had to  
4 be in there or never heard of a trial or anything.

5 MS. WEIRICH: And this was a cousin you said?

6 PROSPECTIVE JUROR: No, ma'am, a family member.

7 MS. WEIRICH: A family member, okay. Anything  
8 about that that would keep you from giving both sides of this  
9 case a fair trial?

10 PROSPECTIVE JUROR: No, ma'am.

11 MS. WEIRICH: Anyone else I've left off? Have any  
12 of you been arrested, convicted, indicted or charged with a  
13 crime, any of you new people?

14 Okay. All right. Thank you. I'll pass for cause,  
15 Your Honor.

16 THE COURT: Mr. Bailey.

17 MR. W. BAILEY: Thank you, Your Honor. I trust  
18 that I was talking loud enough when I was addressing your  
19 predecessors, that you jurors before could hear me. Would any  
20 of you answer any of those questions differently?

21 We talked about a lot of things. We talked about the  
22 burden of proof, that the burden of proof is -- rests with the  
23 prosecutors and that these fine young ladies have got the  
24 responsibility of discharging that burden beyond a reasonable  
25 doubt.



1           Now we also talked about the presumption of innocence.  
2           And any of you have -- I take it all of you can give  
3           Mr. Braswell -- and that's a very important presumption. It's  
4           not just an empty ritual that we go through. I think I used  
5           the illustration of the person coming out of Walgreens being  
6           escorted by the police and we talked about sometimes we would  
7           rush to judgment and say he must be guilty of something,  
8           otherwise, they wouldn't be putting him in the squad car.

9           Ms. Fite, you would give him the presumption?

10           PROSPECTIVE JUROR: Pardon me?

11           MR. W. BAILEY: You would give him the presumption  
12           of being innocent?

13           PROSPECTIVE JUROR: Oh, absolutely, yes.

14           MR. W. BAILEY: You work at Baker Donelson?

15           PROSPECTIVE JUROR: Yes.

16           MR. W. BAILEY: You're in litigation?

17           PROSPECTIVE JUROR: No, I'm in information  
18           technology, doing software training. I have no connection  
19           with clients or actually the only time I have the attorneys is  
20           when they come through training.

21           MR. W. BAILEY: So you're not part of the trial  
22           advocacy team?

23           PROSPECTIVE JUROR: No, not at all.

24           MR. W. BAILEY: Thank you. Is there a Mr. Fite?

25           PROSPECTIVE JUROR: Yes, there is.

1 MR. W. BAILEY: What does he do, ma'am?

2 PROSPECTIVE JUROR: He's the credit manager at  
3 Seabrook Wallcoverings.

4 MR. W. BAILEY: Is there anything about this case  
5 that would cause you not to be able to call a ball a ball and  
6 a strike a strike?

7 PROSPECTIVE JUROR: No.

8 MR. W. BAILEY: How about you, Mr. Wade? Wade,  
9 isn't it?

10 PROSPECTIVE JUROR: Yes.

11 MR. W. BAILEY: Is there anything about this case  
12 that would put you in a position of not being able to be fair  
13 and impartial?

14 PROSPECTIVE JUROR: No.

15 MR. W. BAILEY: You could apply your common senses  
16 and reach a fair and impartial verdict?

17 PROSPECTIVE JUROR: Yes.

18 MR. W. BAILEY: And is there a Mrs. Wade?

19 PROSPECTIVE JUROR: Yes.

20 MR. W. BAILEY: And what does she do?

21 PROSPECTIVE JUROR: She's a homemaker.

22 MR. W. BAILEY: I see. Thank you. Mr. Braddock,  
23 how about you, sir?

24 PROSPECTIVE JUROR: Yes, sir.

25 MR. W. BAILEY: Is there a Mrs. Braddock?

1 PROSPECTIVE JUROR: Mrs. Braddock.

2 MR. W. BAILEY: Is there anything about this case  
3 that would cause you not to be able to call a ball a ball and  
4 a strike a strike?

5 PROSPECTIVE JUROR: No.

6 MR. W. BAILEY: Mr. --

7 PROSPECTIVE JUROR: -- Gillespie.

8 MR. W. BAILEY: Gillespie. Is there anything  
9 about this case that would make you uncomfortable?

10 PROSPECTIVE JUROR: No, sir.

11 MR. W. BAILEY: And is there a Mrs. Gillespie?

12 PROSPECTIVE JUROR: Yes, sir.

13 MR. W. BAILEY: What does she do?

14 PROSPECTIVE JUROR: She's a school counselor at  
15 Charjean Elementary.

16 MR. W. BAILEY: I see. And what do you do?

17 PROSPECTIVE JUROR: I'm a telecommunications  
18 technician. I work in the network operations center at Fed  
19 Ex.

20 MR. W. BAILEY: I see. Thank you. Ms. Gray, how  
21 about you? It is Ms. Gray, isn't it?

22 PROSPECTIVE JUROR: Correct.

23 MR. W. BAILEY: How about you, Ms. Gray?

24 PROSPECTIVE JUROR: As far as what?

25 MR. W. BAILEY: Can you be fair and impartial?

1 PROSPECTIVE JUROR: Yes, I can.

2 MR. W. BAILEY: You can hang with us?

3 PROSPECTIVE JUROR: I sure can.

4 MR. W. BAILEY: Follow the proof?

5 PROSPECTIVE JUROR: I sure can.

6 MR. W. BAILEY: Don't be swayed? All right.

7 We'll leave that there. Ms. Kinard, did I pronounce that  
8 correctly?

9 PROSPECTIVE JUROR: Around here most people say  
10 Kinard. I answer to both.

11 MR. W. BAILEY: And I take it you can be fair and  
12 impartial?

13 PROSPECTIVE JUROR: Yes, sir.

14 MR. W. BAILEY: Is there a Mr. Kinard?

15 PROSPECTIVE JUROR: Yes. Well, there was this  
16 morning anyway. He's with realty title company. It's a  
17 division of Crye-Leike.

18 MR. W. BAILEY: And I think you're in real estate,  
19 too, right?

20 PROSPECTIVE JUROR: Actually, I am and I'm not.  
21 I'm an office manager for the number one agent for Crye-Leike.

22 MR. W. BAILEY: Dr. West, how about you, sir? Can  
23 you be fair and impartial?

24 PROSPECTIVE JUROR: Certainly.

25 MR. W. BAILEY: Can you call a ball a ball and a

1 strike a strike?

2 PROSPECTIVE JUROR: Yes, I can.

3 MR. W. BAILEY: Let me ask you. You enjoy a  
4 unique position in that this case is going to involve medical  
5 testimony from experts. And, of course, you are -- you've had  
6 extensive practice in general surgery; is that correct?

7 PROSPECTIVE JUROR: That's correct, yes, sir.

8 MR. W. BAILEY: And, of course, you'll be sitting  
9 with lay jurors. And when I say "lay," I mean this is not  
10 within their field. Just like I'm a layperson in terms of the  
11 medical field. Would you use your medical position to make  
12 the field unlevel, that is to try and convince them and  
13 persuade them based on your own medical knowledge?

14 PROSPECTIVE JUROR: No, sir. I think each has to  
15 hear his own.

16 MR. W. BAILEY: And you understand that even  
17 though you've got the expertise, you qualify as a medical  
18 expert, I mean, that's what you are in surgery. And a lot of  
19 the evidence will center around wound and an analysis of  
20 wound. And, of course, you have a responsibility to listen to  
21 the experts as they testify about wound damage on the stand.  
22 Would you be inclined to or could you subjugate your own  
23 knowledge and listen to them and not try to second-guess those  
24 experts?

25 PROSPECTIVE JUROR: Oh, yes. I think I would not

1 try to second-guess them. There's no way to dispel knowledge.  
2 You can't set your actual knowledge aside.

3 MR. W. BAILEY: I understand that. I understand  
4 that. You're absolutely right. But would you try to  
5 second-guess them and supplant their opinions and what they've  
6 said with your own opinion?

7 PROSPECTIVE JUROR: No, sir.

8 MR. W. BAILEY: You'd be -- you'd feel locked in  
9 by what they would say?

10 PROSPECTIVE JUROR: I'd feel open to certainly  
11 listening to what was presented.

12 MR. W. BAILEY: Well, as an example, we're going  
13 to have forensic pathologists. And in that context, of  
14 course, they're going to talk about the medical proof, their  
15 analysis, their diagnoses and their findings. And the  
16 question is can you listen to them and accept their testimony  
17 and weigh it, of course His Honor will tell you how you weigh  
18 the testimony of expert witnesses, but the point is could you  
19 subjugate your own opinion and even though you may disagree  
20 with them and accept what they say under the ground rules of  
21 how you accept the testimony of expert witnesses?

22 PROSPECTIVE JUROR: Yes, I could, certainly.

23 MR. W. BAILEY: We're going to have the testimony,  
24 we anticipate, of a psychologist. And can you listen to the  
25 psychological testimony, the expert testimony and evaluate

1       that?

2                   PROSPECTIVE JUROR:  Yes, sir.

3                   MR. W. BAILEY:  Under the same ground rules of how  
4       you evaluate expert testimony?

5                   PROSPECTIVE JUROR:  I believe indeed I could.

6                   MR. W. BAILEY:  You wouldn't try to second-guess  
7       the psychologist?

8                   PROSPECTIVE JUROR:  No, sir.

9                   MR. W. BAILEY:  Now do you -- could you listen to  
10      the other jurors and hear what they've got to say and hold  
11      yourself open to be convinced and persuaded by their arguments  
12      as well about this case?

13                  PROSPECTIVE JUROR:  Yes, I do.  I think certainly  
14      I can keep a very open mind.

15                  MR. W. BAILEY:  Now let me ask you other jurors,  
16      the fact that we would have a physician in the box or in the  
17      jury room during deliberations, could the rest of you rely  
18      upon your own independent recollection of what the facts were,  
19      what was said here on the stand and listen -- and go by the --  
20      evaluate this case solely on the presentation of proof by the  
21      medical experts that His Honor swore in and allowed to  
22      testify?

23                  And you understand that anything that the -- Dr. West,  
24      if he were chosen, wouldn't be back there as a witness, he'd  
25      be back there just as an ordinary common juror.  All of you

1 understand that? And that you -- you would do us a disservice  
2 if you relied on him and his medical opinion. All of you feel  
3 that you could do that?

4 PROSPECTIVE JUROR: Yes, sir.

5 PROSPECTIVE JUROR: Yes.

6 MR. W. BAILEY: Would Your Honor indulge me?

7 Thank you.

8 THE COURT: Dr. West, you're excused at this time.  
9 Thank you, sir, for your participation. And, Ms. Fite, if you  
10 would have a seat behind you, please.

11 All right. The 12 jurors on the back two rows have now  
12 been selected as to the jurors in this case. We will now  
13 select two alternate jurors. Let me ask Mr. Wade to have a  
14 seat on the back row, please, next to Mr. Berry.

15 All right. Mr. Wade has been selected as alternate  
16 number one. We'll now select alternate number two.  
17 Mr. Braddock, if you would have a seat on the back next to  
18 Mr. Wade, please.

19 Mr. Braddock, you're excused at this time. Thank you  
20 very much for your participation. And, Mr. Gillespie, if  
21 you'd have a seat on the back row, please, sir.

22 MR. J. BAILEY: Court indulge us one moment.

23 THE COURT: All right. Mr. Gillespie has been  
24 chosen as alternate number two. At this time I'd like to  
25 thank Ms. Gray and Ms. Kinard and those of you still in the



1 audience for your patience today and your willingness to serve  
2 on this case, even though you weren't actually called upon.  
3 At this time you are all excused. Please check back tomorrow  
4 morning in the large jury room.

5 All right. Ladies and gentlemen, we'll stop for the  
6 day at this time. I'll ask you all to be back down here at  
7 nine o'clock tomorrow morning. You do not need to go across  
8 the street to the large jury room and check in over there.  
9 They know that you've been assigned to this case so just come  
10 straight to this building and straight on up to our jury room  
11 here on the sixth floor. Don't linger in the hallway or down  
12 in the snack bar or anything of that sort. When you come in  
13 the building, come straight on up the elevator and straight on  
14 back to the jury room, please. Please, bring your suitcases  
15 with you tomorrow and we'll swear you in tomorrow morning and  
16 we will resume the trial.

17 So we will see all of you -- and of course as always,  
18 do not discuss the case at all tonight with family or friends  
19 or tomorrow when you return. Obviously, you can tell your  
20 family that you are on a sequestered jury starting tomorrow  
21 and that's why you won't be home tomorrow night, but other  
22 than that you cannot discuss the case tonight or anything  
23 about the case at all with anybody.

24 JUROR: Is it somewhere we can park or we just  
25 need to get dropped off?

1 THE COURT: Best to get dropped off. Officer  
2 Lafferty can answer all those questions for you. He's had a  
3 lot of experience on that.

4 JUROR: Is there something I can take my employer  
5 tonight?

6 THE COURT: We'll get you something.

7 JUROR: I am a diabetic so the medicines I usually  
8 put -- some of my medicines I put in a pill bottle, my little  
9 daily pill thing. Do I need to bring the original bottles or  
10 can I keep them in my container?

11 THE COURT: I think you can keep them in your  
12 container. I don't -- I can't anticipate a problem getting  
13 through security, but if there is I'll come down and make sure  
14 that there is no problem.

15 Thank you. We'll see you tomorrow morning at nine  
16 o'clock in the jury room.

17 (Jurors out.)

18 MR. J. BAILEY: Your Honor, just so we'll have an  
19 idea, exactly what time does Your Honor plan for the trial  
20 itself to start?

21 THE COURT: Nine o'clock.

22 MR. J. BAILEY: Your Honor is not going to call a  
23 calendar?

24 THE COURT: Nine o'clock every morning. Nine to  
25 six will be the hours.

1 MR. W. BAILEY: On that expert?

2 THE COURT: You know, my best guess is that we'll  
3 need him on Thursday. And I know you said that's the day  
4 that's difficult for him. I don't know how difficult,  
5 difficult is. But we've got these jurors and we're in the  
6 middle of this trial and it's December and I certainly don't  
7 want -- I know y'all don't want to keep the jurors any longer  
8 than is absolutely necessary.

9 It just looks to me like Thursday is going to be the  
10 day we get to the Defense proof. So if you have other proof  
11 you can put on Thursday and call him first thing Friday  
12 morning, I don't see us realistically getting through the  
13 State's proof early enough on Wednesday to put an expert on of  
14 that sort. And so there is no way that you'll need to have  
15 him here Wednesday. Thursday afternoon would be good. If he  
16 absolutely cannot be here under any circumstances Thursday,  
17 then have him here ready to testify first thing Friday  
18 morning.

19 MR. J. BAILEY: We can do that.

20 MR. W. BAILEY: Very well.

21 THE COURT: Take him out.

22 MR. W. BAILEY: We'll plead with him, Judge.

23 THE COURT: And as soon as I say that, it may be  
24 Friday anyway. So who knows but we do the best we can. You  
25 may adjourn court.

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(Court was adjourned until 9 a.m.,

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Tuesday, December 6, 2005.)

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(END OF VOLUME ONE)